

January 31, 2002

**LIMITED ENGLISH PROFICIENCY (LEP)
TITLE VI PROHIBITION AGAINST NATIONAL ORIGIN
DISCRIMINATION IN FEDERALLY-CONDUCTED PROGRAMS AND
ACTIVITIES AND IN FEDERAL-FINANCIAL ASSISTED PROGRAMS**

1. PURPOSE: This Veterans Health Administration (VHA) Directive issues policy prohibiting discrimination on the basis of national origin for persons with limited English proficiency in Federally-conducted programs and activities and in Federal financial assisted programs.

2. BACKGROUND

a. Executive Order (E.O.) 13166, Improving Access to Services for Persons with Limited English Proficiency (LEP) provides for improving access to Federally-Conducted and Federally-assisted programs and activities for person who, as a result of national origin, are limited in their English proficiency, and eliminating to the maximum extent possible LEP as an artificial barrier to full and meaningful participation by beneficiaries in all Federally-assisted and Federally-conducted programs and activities.

b. Equal opportunity laws and the Department of Veterans Affairs (VA) regulations prohibit discrimination based on national origin. This applies to all programs or activities conducted by VHA and to all programs receiving financial assistance from the Agency.

3. POLICY: It is VHA policy that no one can be subjected to any form of discrimination because of national origin in any and all VHA programs, or in programs receiving VA funding, or in any VA program receiving Federal financial assistance.

4. ACTION: VHA key officials must:

a. Establish and implement policies and procedures for providing language assistance sufficient to fulfill their equal opportunity responsibilities and provide LEP persons with meaningful access to services.

b. Enforce this policy as it applies to covered programs' or activities' responsibilities to LEP persons through the procedures provided for in the same civil rights administrative complaint procedure to process allegations of discrimination on the basis of national origin as outlined in VHA policy.

THIS VHA DIRECTIVE EXPIRES JANUARY 31, 2007

VHA DIRECTIVE 2002-006

January 31, 2002

c. Ensure that programs receiving Federal financial assistance (Atts. A- D), or Federally-conducted programs and activities (Atts. E-G) under their respective jurisdictions, are in full compliance with all nondiscrimination mandates and agency regulations.

d. Ensure timely processing of all external civil rights and equal opportunity discrimination complaints, and must ensure that Equal Employment Opportunity/Affirmative Employment Specialist is performing this function timely and accurately.

e. Take steps to ensure that guidance is provided to Federal financial recipients to comply with E.O. 13166; and to assess and address the needs of otherwise eligible persons seeking access to Federally-conducted programs and activities who, due to limited English proficiency, cannot fully and equally participate in or benefit from those programs and activities as required in E.O. 13166.

5. REFERENCES

a. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency.

b. Title 38 CFR Chapter 1, Part 18, Nondiscrimination in Federally-Assisted Programs of the Department of Veterans Affairs, Effectuation of Title VI of the Civil Rights Act of 1964, Subparts A, D, and E.

6. FOLLOW-UP RESPONSIBILITY: The Director, Management Support Office, EEO and Affirmative Employment Team (10A2E), is responsible for the contents of this Directive.

7. RESCISSIONS: VHA Directive 99-043 and change 1, is rescinded. This VHA Directive expires January 31, 2007.

S/Tom Sanders for
Thomas L. Garthwaite, M.D.
Under Secretary for Health

DISTRIBUTION CO: E-mailed 2/1/2002
FLD: VISN, MA, DO, OC, OCRO, and 200 – E-mailed 2/1/2002

January 31, 2002

ATTACHMENT A

**VETERANS HEALTH ADMINISTRATION
GUIDANCE FOR EXECUTIVE ORDER 13166, LIMITED ENGLISH
PROFICIENCY (LEP) TITLE VI PROHIBITION AGAINST NATIONAL
ORIGIN DISCRIMINATION IN FEDERAL AND/OR FINANCIAL
ASSISTED PROGRAMS**

1. Background

a. On August 11, 2000, the President issued Executive Order (E.O.) 13166, entitled "Improving Access to Services for Persons with Limited English Proficiency." The Executive Order directs each Federal agency that grants Federal financial assistance to develop and submit to the Department of Justice (DOJ) for review and approval, after consultations with relevant stakeholders, draft agency-specific guidance on services to individuals with limited English proficiency (LEP).

b. The Veterans Health Administration (VHA) administers several programs and activities that receive Federal financial assistance from the Department of Veterans Affairs (VA).

c. The lack of language assistance capability among agency employees may have adverse consequences in the delivery of services. This essential exchange of information is difficult when the two parties involved speak different languages; it may be impeded further by the presence of an unqualified third person that attempts to serve as an interpreter. Title VI requires equal access to Federally-assisted programs and activities. Services denied, delayed or provided under adverse circumstances will constitute discrimination on the basis of national origin, in violation of Title VI. Accommodation of language differences through the provision of effective language assistance will promote compliance with Title VI.

d. VA policy guidance will be consistent with a DOJ directive noting that recipient or covered entities have an obligation pursuant to Title VI's prohibition against national origin discrimination to provide oral and written language assistance to LEP persons. It must also be consistent with a government-wide Title VI regulation issued by DOJ in 1976, "Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs," Title 28 Code of Federal Regulations (CFR) Part 42, Subpart F, that addresses the circumstances in which recipient or covered entities must provide written language assistance to LEP persons.

2. Legal Authority

a. **Introduction.** Over the last 30 years, the DOJ Office of Civil Rights (OCR) has conducted thousands of investigations and reviews involving language differences that impede the access of LEP persons to medical care and social services. Where the failure to accommodate language differences discriminates on the basis of national origin, OCR has entered into voluntary compliance agreements and consent decrees that require recipients who operate health and social service programs to ensure that there are bilingual employees or

VHA DIRECTIVE 2002-006

January 31, 2002

language interpreters to meet the needs of LEP persons seeking services. OCR has also required these recipient or covered entities to provide written materials and post notices in languages other than English. The legal authority for OCR's enforcement actions is Title VI of the Civil Rights Act of 1964, the implementing regulations, and a consistent body of case law. The legal authority is described as follows:

b. Statute and Regulation

(1) Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d *et. seq.* and VA regulations 38 C.F.R. Chapter 1, Subpart A, Section 18.3(a) state: "No person in the United States shall on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

(2) Regulations implementing Title VI, provide in Part 18.3(b) at 38 C.F.R.

(a) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on grounds of race, color, or national origin:

1. Deny an individual any service, financial aid, or other benefit provided under the program;
2. Provide any service, financial aid, or other benefit to an individual, which is different, or is provided in a different manner, from that provided to others under the program.

(b) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program or the class of individuals to whom, or the situations in which such services, financial aid or other benefits, or facilities will be provided ... *may not directly, or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination, because of their race, color or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular, race color or national origin.* (emphasis added).

(3) Title VI regulations prohibit both intentional discrimination and policies and practices that appear neutral but have a discriminatory effect. Thus, a recipient or covered entity's policies or practices regarding the provision of benefits and services to LEP persons need not be intentional to be discriminatory, but may constitute a violation of Title VI if they have an adverse effect on the ability of national origin minorities to meaningfully access programs and services. Accordingly, it is useful for recipient or covered entities to examine their policies and practices to determine whether they adversely affect LEP persons. This policy guidance provides a legal framework to assist recipient or covered entities in conducting such assessments.

c. Policy Guidance

(1) All entities that receive Federal financial assistance from the Department of Veterans Affairs (VA) listed in 38 C.F.R. , Part 18, Appendix A (Att. E), either directly or indirectly, through a grant, contract or subcontract, are covered by this policy guidance. Covered entities include: (1) any state or local agency, private institution or organization, or any public or private individual that (2) operates, provides or engages in health, or social service programs and activities and that (3) receives Federal financial assistance from VA directly or through another recipient or covered entity. Examples of covered entities include but are not limited to: hospitals; nursing homes; home health agencies; managed care organizations; universities and other entities with health or social service research programs; state, county and local health agencies; state Medicaid agencies; state, county and local welfare agencies; program for families, youth and children; Head Start programs; public and private contractors; subcontractors and vendors; physicians; and other providers who receive Federal financial assistance from VA.

(2) The term Federal financial assistance to which Title VI applies includes, but is not limited to, grants and loans of Federal funds, grants or donations of Federal property, details of Federal personnel, or any agreement, arrangement or other contract which has as one of its purposes the provision of assistance. Title VI prohibits discrimination in any program or activity that receives Federal financial assistance. What constitutes a program or activity covered by Title VI was clarified by Congress in 1988, when the Civil Rights Restoration Act of 1987 (CRRRA) was enacted. The CRRRA provides that, in most cases, when a recipient or covered entity receives Federal financial assistance for a particular program or activity, all operations of the recipient or covered entity are covered by Title VI, even if the Federal assistance is used only by one part.

3. Basic Requirements Under Title VI

a. A recipient or covered entity whose policies, practices or procedures exclude, limit, or have the effect of excluding or limiting the participation of any LEP person in a Federally-assisted program on the basis of national origin, may be engaged in discrimination in violation of Title VI. In order to ensure compliance with Title VI, recipient or covered entities must take steps to ensure that LEP persons who are eligible for their programs or services have meaningful access to the health and social service benefits that they provide. The most important step in meeting this obligation is for recipients of Federal financial assistance such as grants, contracts, and subcontracts to provide the language assistance necessary to ensure such access, at no cost to the LEP person.

b. The type of language assistance a recipient or covered entity provides to ensure meaningful access will depend on a variety of factors, including the size of the recipient or covered entity; the size of the eligible LEP population it serves; the nature of the program or service; the objectives of the program; the total resources available to the recipient or covered entity; the frequency with which particular languages are encountered; and the frequency with which LEP persons come into contact with the program. There is no "one size fits all" solution for Title VI compliance with respect to LEP persons. VHA will make its assessment of the language assistance needed to ensure meaningful access on a case-by-case basis, and a recipient or covered entity will have considerable flexibility in determining precisely how to fulfill this

January 31, 2002

obligation. VHA will focus on the end result whether the recipient or covered entity has taken the necessary steps to ensure that LEP persons have meaningful access to its programs and services.

c. The key to providing meaningful access for LEP persons is to ensure that the recipient or covered entity and LEP person can communicate effectively. The steps taken by a covered entity must ensure that the LEP person is given adequate information, is able to understand the services and benefits available, and is able to receive those for which the LEP person is eligible. The covered entity must also ensure that the LEP person can effectively communicate the relevant circumstances of his or her situation to the service provider.

d. In enforcing Title VI and its application to LEP, it has been found that effective language assistance programs usually contain the four elements described in section three below. In reviewing complaints and conducting compliance reviews, a program will be considered to be in compliance when the recipient or covered entity effectively incorporates and implements these four elements. The failure to incorporate or implement one or more of these elements does not necessarily mean noncompliance with Title VI, and VHA will review the totality of the circumstances to determine whether LEP persons can meaningfully access the services and benefits of the recipient or covered entity.

4. Ensuring Meaningful Access to LEP Persons

a. **Introduction to the Four Keys to Title VI Compliance In the LEP Context.** The key to providing meaningful access to benefits and services for LEP persons is to ensure that the language assistance provided results in accurate and effective communication between the provider and LEP applicant or client's circumstances. Although recipients have considerable flexibility in fulfilling this obligation, it has been found that effective programs usually have the following four elements:

(1) **Assessment.** The recipient or covered entity conducts a thorough assessment of the language needs of the population to be served;

(2) **Development of Comprehensive Written Policy on Language Access.** The recipient or covered entity develops and implements a comprehensive written policy that will ensure meaningful communication;

(3) **Training of Staff.** The recipient or covered entity takes steps to ensure that staff understands the policy and is capable of carrying it out; and

(4) **Vigilant Monitoring.** The recipient or covered entity conducts regular oversight of the language assistance program to ensure that LEP persons meaningfully access the program.

***NOTE:** The failure to implement one or more of these measures does not necessarily mean non-compliance with Title VI, and VHA will review the totality of the circumstances in each case. If implementation of one or more of these options would be so financially burdensome as to defeat*

the legitimate objectives of a recipient or covered entity's program, or if there are equally effective alternatives for ensuring that LEP persons have meaningful access to programs and services, VHA will not find the recipient or covered entity in non-compliance.

b. **Assessment.** The first key to ensuring meaningful access to programs is for the recipient or covered entity to assess the language needs of the affected population. A recipient or covered entity assesses language need by identifying the:

(1) Non-English languages that are likely to be encountered in its program and by estimating the number of LEP persons that are eligible for services and that are likely to be directly affected by its program. This can be done by reviewing census data, client utilization data from client files and data from school systems and community agencies and organizations;

(2) Language needs of each LEP patient or client and recording this information in the client's file;

(3) Points of contact in the program or activity where language assistance is likely to be needed;

(4) Resources that will be needed to provide effective language assistance;

(5) Location and availability of these resources; and

(6) Arrangements that must be made to access these resources in a timely fashion.

c. **Development of Comprehensive Written Policy on Language Access.** A recipient or covered entity can ensure effective communication by developing and implementing a comprehensive written language assistance program that includes policies and procedures of identifying and assessing the language needs of its LEP applicants or clients. Effective communication can also be ensured by providing a range of oral language assistance options, providing notices to LEP persons in a language they can understand regarding the right to free language assistance, providing periodic training of staff, monitoring of the program, and translating written materials in certain circumstances.

(1) **Oral Language Interpretation.** In designing an effective language assistance program, a recipient or covered entity develops procedures for obtaining and providing trained and competent interpreters and other oral language assistance services, in a timely manner, by taking some or all of the following steps:

(a) Hiring bilingual staff who are trained and competent in the skill of interpreting;

(b) Hiring staff interpreters who are trained and competent in the skill of interpreting;

(c) Contracting with an outside interpreter service for trained and competent interpreters;

VHA DIRECTIVE 2002-006

January 31, 2002

(d) Arranging formally for the services of voluntary community interpreters who are trained and competent in the skill of interpreting;

(e) Arranging and/or contracting for the use of a telephone language interpreter service.

(2) **Language Assistance Options.** The following provides guidance to recipients or covered entities in determining which language assistance options will be of sufficient quantity and quality to meet the needs of their LEP beneficiaries:

(a) Bilingual Staff. Hiring bilingual staff for patient and client contact positions facilitates participation by LEP persons. However, where there are a variety of LEP language groups in a recipient's service area, this option may be insufficient to meet the needs of all LEP applicants and clients. Where this option is insufficient to meet the needs, the recipient or covered entity must provide additional and timely language assistance. Bilingual staff must be trained and must demonstrate competence as interpreters.

Staff Interpreters. Paid staff interpreters are especially appropriate where there is a frequent and/or regular need for interpreting services. These persons must be competent and readily available.

(b) Contract Interpreters. The use of contract interpreters may be an option for recipient or covered entities that have an infrequent need for interpreting services, have less common LEP language groups in their service areas, or need to supplement their in-house capabilities on an as needed basis. Such contract interpreters must be readily available and competent. Community Volunteers. Use of community volunteers may provide recipient or covered entities with a cost-effective method for providing interpreter services. However, experience has shown that to use community volunteers effectively, recipient or covered entities must ensure that formal arrangements for interpreting services are made with community organizations so that these organizations are not subjected to ad hoc requests for assistance. In addition, recipients or covered entities must ensure that these volunteers are competent as interpreters and understand their obligation to maintain client confidentiality. Additional language assistance must be provided where competent volunteers are not readily available during all hours of service.

(c) Telephone Interpreter Lines. A telephone interpreter service line may be a useful option as a supplemental system, or may be useful when a recipient or covered entity encounters a language that it cannot otherwise accommodate. Such a service often offers interpreting assistance in many different languages and usually can provide the service in quick response to a request. However, recipient or covered entities should be aware that such services may not always have readily available interpreters who are familiar with the terminology peculiar to the particular program or service. It is important that a recipient or covered entity not offer this as the only language assistance option except where other language assistance options are unavailable (e.g., in a rural clinic visited by an LEP patient who speaks a language that is not usually encountered in the area).

(d) Translation of Written Materials. An effective language assistance program ensures that written materials that are routinely provided in English to applicants, clients and the public are

available in regularly encountered languages other than English. It is particularly important to ensure that vital documents, such as applications; consent forms; letters containing important information regarding participation in a program; notices pertaining to their education; denial or termination of services or benefits; notices pertaining to the right to appeal such actions or that require a response from beneficiaries; notices advising LEP persons of the availability of free language assistance; and other outreach materials be translated into the non-English language of each regularly encountered LEP group eligible to be served or likely to be directly affected by the recipient or covered entity's program.

(3) The Recipient Must Develop and Implement a Plan. As part of its overall language assistance program, a recipient must develop and implement a plan to provide written materials in languages other than English where a significant number or percentage of the population eligible to be served or likely to be directly affected by the program needs services or information in a language other than English to communicate effectively. VHA will determine the extent of the recipient or covered entity's obligation to provide written translation of documents on a case-by-case basis, taking into account all relevant circumstances, including the nature of the recipient or covered entity's services or benefits; the size of the recipient or covered entity; the number and size of the LEP language groups in its service area; the nature and length of the document; the objectives of the program; the total resources available to the recipient or covered entity; the frequency with which translated documents are needed and the cost of translation.

(a) One way for a recipient or covered entity to know with greater certainty that it will be found in compliance with its obligation to provide written translations in languages other than English is for the recipient or covered entity to meet the guidelines outlined in following subparagraph 4c(3)(a)3.a. and subparagraph 4c(3)(a)3.b.

1. Subparagraph 4c(3)(a)3.a. and subparagraph 4c(3)(a)3.b. outline the circumstances that provide a "safe harbor" for recipients or covered entities. A recipient or covered entity that provides written transactions under these circumstances can be confident that it will be found in compliance with its obligation under Title VI regarding written translations. However, the failure to provide written translations under these circumstances outlined in subparagraph 4c(3)(a)3.a. and subparagraph 4c(3)(a)3.b., will not necessarily mean noncompliance with Title VI.

2. In such circumstances, VHA will review the totality of the circumstances to determine the precise nature of a recipient or covered entity's obligation to provide written materials in languages other than English. If written translation of a certain document or set of documents would be so financially burdensome as to defeat the legitimate objectives of its program, or if there is an alternative means of ensuring that LEP persons have meaningful access to the information provided in the document (such as timely, effective oral interpretation of vital documents), VHA will not find the translation to written materials necessary for compliance with Title VI.

3. VHA will consider a recipient or covered entity to be in compliance with its Title VI obligation to provide written materials in non-English languages if:

VHA DIRECTIVE 2002-006

January 31, 2002

a. The recipient or covered entity provides translated written materials, including vital documents, for each eligible LEP language group that constitutes ten percent or 3,000, whichever is less, of the population of persons eligible to be served or likely to be directly affected by the recipient or covered entity's program;

b. Regarding LEP language groups that do not fall within preceding subparagraph 4c(3)(a)3.a., but constitute five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be directly affected, the recipient or covered entity ensures that, at a minimum, vital documents are translated into the appropriate non-English languages of such LEP persons. Translation of other documents, if needed, can be provided orally; and

c. Notwithstanding preceding subparagraph 4c(3)(a)3.a. and subparagraph 4c(3)(a)3.b., a recipient with fewer than 100 persons in a language group eligible to be served or likely to be directly affected by the recipient or covered entity's program, does not translate written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral translation of written materials.

4. The term "persons eligible to be served or likely to be directly affected" relates to the issue of what is the recipient or covered entity's service area for purposes of meeting its Title VI obligation. There is no "one size fits all" definition of what constitutes "persons eligible to be served or likely to be directly affected" and VHA will address this issue on a case-by-case basis.

5. Ordinarily, persons eligible to be in or likely to be directly affected by a recipient's program are those persons who are in the geographic area that has been approved by a Federal grant agency as the recipient or covered entity's service area, and who either are eligible for the recipient or covered entity's benefits or services, or otherwise might be directly affected by such an entity's conduct. For example, a parent who might seek services for a child would be seen as likely to be affected by a recipient or covered entity's policies and practices. Where no service area has been approved by a Federal grant agency, VHA will consider the relevant service area for determining persons eligible to be served as that designated and/or approved by state or local authorities or designated by the recipient or covered entity itself, provided that these designations do not themselves discriminatorily exclude certain populations. VHA may also determine the service area to be the geographic areas from which the recipient draws, or can be expected to draw, clients or patients. The following are examples of how VHA would determine the relevant service areas when assessing who is eligible to be served or likely to be affected:

a. A complaint filed with VHA alleges that a private school discriminates against Hispanic and Chinese LEP students by failing to provide such persons with language assistance, including written translations of consent forms. The school identifies its service area as the geographic area identified in its marketing plan. VHA determines that a substantial number of the school's students are drawn from the area identified in the marketing plan and that no area with concentrations of racial, ethnic or other minorities is discriminatorily excluded from the plan. VHA is likely to accept the area identified in the marketing plan as the relevant service area.

b. A state enters into a contract with a managed care plan for the provision of health services to Medicaid beneficiaries. The Medicaid-managed care contract provides that the plan will serve beneficiaries in three counties. The contract is reviewed and approved. In determining the persons eligible to be served or likely to be affected, the relevant service area would be designated in the contract.

***NOTE:** As this guidance notes, Title VI provides that no person may be denied meaningful access to a recipient or covered entity's benefits and services, on the basis of national origin. To comply with the Title VI requirement, a recipient or covered entity must ensure that LEP persons have meaningful access to and can understand information contained in program-related written documents. Thus, for language groups that do not fall within preceding subparagraph 4c(3)(a)3.a. and subparagraph 4c(3)(a)3.b., a recipient can ensure such access by, at a minimum, providing notice in writing, in the LEP person's primary language, of the right to receive free language assistance in a language other than English, including the right to competent oral translation of written materials, free of cost.*

6. Recent technological advances have made it easier for recipient or covered entities to store translated documents readily. At the same time, VHA recognizes that recipient or covered entities in a number of areas, such as many large cities, regularly serve LEP persons from many different areas of the world who speak dozens and sometimes over 100 different languages. As a result, VHA will determine the extent of the recipient or covered entity's obligation to provide written translations of documents on a case-by-case basis, looking at the totality of the circumstances.

7. It is also important to ensure that the person translating the materials is well qualified. In addition, it is important to note that in some circumstances verbatim translation of materials may not accurately or appropriately convey the substance of what is contained in the written materials.

8. An effective way to address this potential problem is to reach out to community-based organizations to review translated materials to ensure that they are accurate and easily understood by LEP persons.

(4) Methods for Providing Notice to LEP Persons. A vital part of a well functioning compliance program includes having effective methods for notifying LEP persons regarding their right to language assistance and the availability of such assistance free of charge. These methods include but are not limited to:

(a) Use of language identification cards that allow LEP beneficiaries to identify their language needs to staff and for staff to identify the language needs of applicants and clients. To be effective, the card (e.g., "I speak" cards) must invite the LEP person to identify the language he/she speaks. This identification must be recorded in the LEP person's file;

(b) Posting and maintaining signs in regularly encountered languages other than English in waiting rooms, reception areas and other initial points of entry. In order to be effective, these

VHA DIRECTIVE 2002-006

January 31, 2002

signs must inform applicants and beneficiaries of their right to free language assistance services and invite them to identify themselves as persons needing such services;

(c) Translation of application forms and instructional, informational and other written materials into appropriate non-English languages by competent translators. For LEP persons whose language does not exist in written form, assistance from an interpreter will be needed to explain the contents of the document;

(d) Uniform procedures for timely and effective telephone communication between staff and LEP persons. This must include instructions for English-speaking employees to obtain assistance from interpreters or bilingual staff when receiving calls from or initiating calls to LEP persons; and

(e) Inclusion of statements about the services available and the right to free language assistance services, in appropriate non-English languages, in brochures, booklets, outreach and recruitment information and other materials that are routinely disseminated to the public.

(5) **Training of Staff.** Other vital elements in ensuring that its policies are followed is a recipient or covered entity's dissemination of its policy to all employees likely to have contact with LEP persons, and periodic training of these employees. Effective training ensures that employees are knowledgeable and aware of LEP policies and procedures, are trained to work effectively with in-person and telephone interpreters, and understand the dynamics of interpretation between clients, providers and interpreters. It is important that this training be part of the orientation for new employees and that all employees in client contact positions be properly trained. Given the high turnover rate among some employees, recipient or covered entities may find it useful to maintain a training registry that records the names and dates of employee's training. Effective training is one means of ensuring that there is not a gap between a recipient or covered entity's written policies and procedures, and the actual practices of employees who are in the front lines interacting with LEP persons.

(6) Monitoring of Staff

(a) It is recommended that recipient or covered entities review their language assistance programs at least annually. This should be done to assess the current LEP makeup of its service area and the current communication needs of LEP applicants and clients. A determination should also be made as to whether existing assistance is meeting the needs of such persons, whether staff is knowledgeable about policies and procedures and how to implement them, and whether sources of and arrangements for assistance are still current and viable. One element of such an assessment is for a recipient or covered entity to seek feedback from clients and advocates. Compliance with the Title VI language assistance obligation is most likely when a recipient or covered entity continuously monitors its program, makes modifications where necessary, and periodically trains employees in implementation of the policies and procedures.

(b) The failure to take all the steps outlined above will not necessarily mean that a recipient or covered entity has failed to provide meaningful access to LEP clients. Several factors should be taken into consideration when making an assessment of whether the steps taken by a recipient

or covered entity provide meaningful access. Those factors include the size of the recipient or covered entity and of the eligible LEP population; the nature of the program or service; the objectives of the program; the total resources available; the frequency with which particular languages are encountered; and the frequency with which LEP persons come into contact with the program.

(7) **Interpreters.** A recipient or covered entity must ensure that those persons it provides as interpreters are trained and demonstrate competency as interpreters. Competency does not necessarily mean formal certification as an interpreter, though certification is helpful. On the other hand, competency requires more than self-identification as bilingual. The competency requirement contemplates demonstrated proficiency in both English and the other language. It also includes orientation and training that includes the skills and ethics of interpreting (e.g., issues of confidentiality), fundamental knowledge in both languages of any specialized terms, or concepts peculiar to the recipient or covered entity's program or activity, sensitivity to the LEP person's culture and a demonstrated ability to convey information in both languages accurately. A recipient or covered entity may expose itself to liability under Title VI if it requires, suggests, or encourages an LEP person to use friends, minor children, or family members as interpreters, as this could compromise the effectiveness of the service.

(a) Use of Friends, Family, and Minor Children as Interpreters. A recipient or covered entity may expose itself to liability under Title VI if it requires, suggests, or encourages an LEP person to use friends, minor children, or family members as interpreters, as this could compromise the effectiveness of the service. Use of such persons could result in a breach of confidentiality or reluctance on the part of individuals to reveal personal information critical to their situations. In a medical setting, this reluctance could have serious, even life threatening consequences. In addition, family and friends usually are not competent to act as interpreters, since they are often insufficiently proficient in both languages, unskilled in interpretation, and unfamiliar with specialized terminology. If after a recipient or covered entity informs an LEP person of the right to free interpreter services, the person declines such services and requests the use of a family member or friend, the recipient or covered entity may use the family member or friend if the use of such a person would not compromise the effectiveness of services or violate the LEP person's confidentiality. The recipient or covered entity should document the offer and declination in the LEP person's file. Even if an LEP person elects to use a family member or friend, the recipient or covered entity should suggest that a trained interpreter sit in on the encounter to ensure accurate interpretation.

(b) Competence of Interpreters. In order to provide effective services to LEP persons, a recipient or covered entity must ensure that it uses persons who are competent to provide interpreter services. A recipient or covered entity must ensure that those persons it provides as interpreters are trained and demonstrate competency as interpreters.

(8) **Examples of Frequently Encountered Scenarios.** The following are examples of policies and practices that are likely to violate Title VI:

(a) A community health clinic uses a Spanish-speaking security guard who has no training in interpreting skills and is unfamiliar with medical terminology, as an interpreter for its Hispanic

VHA DIRECTIVE 2002-006

January 31, 2002

LEP patients. He frequently relays inaccurate information that results in inaccurate instructions to patients.

(b) A local health clinic uses a Vietnamese janitor to interpret whenever a Vietnamese spouse of a veteran seeks medical care. The janitor has been in America for 6 months, does not speak English well and is not familiar with the terminology that is used. He often relays inaccurate information that results in the denial of benefits to clients.

(c) A state home does not advise a veteran of the veteran's right to free language assistance and encourages the person to use the eleven year-old daughter to interpret. The daughter does not understand the terminology being used and relays inaccurate information to her parent(s) whose health is jeopardized by the failure to obtain accurate information.

(d) A medical school uses a medical student as an interpreter based on the medical student's self-identification as bilingual. While in college, the student had spent a semester in Spain as an exchange student. The student speaks Spanish haltingly and must often ask patients to speak slowly and to repeat their statements. On several occasions, the medical student has relayed inaccurate information that has resulted in misdiagnosis.

(e) A non-English speaking veteran attempts to apply for admission to a state home and is instructed to provide interpreter services during office visits.

(f) A community health clinic requires non-English speaking patients to pay for interpreter services.

d. **Best Practices.** In meeting the needs of their LEP patients and clients, some recipient or covered entities have found unique ways of providing interpreter services and reaching out to the LEP community. As part of its technical assistance, VHA will assist recipient or covered entities who are interested in learning about promising practices in the area of service to LEP populations. Examples of promising practices include the following:

(1) **Simultaneous Translation.** One urban hospital is testing a state-of-the-art medical interpretation system in which the provider and patient communicate using wireless remote headsets while a trained competent interpreter, located in a separate room, provides simultaneous interpreting services to the provider and patient. The interpreter can be miles away. This reduces delays in the delivery of language assistance, since the interpreter does not have to travel to the recipient or covered entity's facility. In addition, a provider that operates more than one facility can deliver interpreter services to all facilities using this central bank of interpreters, as long as each facility is equipped with the proper technology.

(2) **Language Banks.** In several parts of the country, both urban and rural, community organizations and providers have created community language banks that train, hire and dispatch competent interpreters to participating organizations, reducing the need to have on-staff interpreters for low demand languages. These language banks are frequently nonprofit and

charge reasonable rates. This approach is particularly appropriate where there is a scarcity of language services, or where there is a large variety of language needs.

(3) **Language Support Office.** A state social services agency has established an "Office for Language Interpreter Services and Translation." This office tests and certifies all in-house and contract interpreters, provides agency-wide support for translation of forms, client mailings, publications and other written materials into non-English languages, and monitors the policies of the agency and its vendors that affect LEP persons.

(4) **Multicultural Delivery Project.** Another county agency has established a "Multicultural Delivery Project" that is designed to find interpreters to help immigrants and other LEP persons to navigate the county health and social service systems. The project uses community outreach workers to work with LEP clients and can be used by employees in solving cultural and language issues. A multicultural advisory committee helps to keep the county in touch with community needs.

(5) **Pamphlets.** A hospital has created pamphlets in several languages, entitled, "While Awaiting the Arrival of an Interpreter." The pamphlets are intended to facilitate basic communication between inpatients, outpatients, and staff. They are not intended to replace interpreters but may aid in increasing the comfort level of LEP persons as they wait for services.

(6) **Use of Technology.** Some recipient or covered entities use their Internet and/or Intranet capabilities to store translated documents online. These documents can be retrieved as needed.

(7) **Telephone Information Lines.** Recipient or covered entities have established telephone information lines in languages spoken by frequently encountered language groups to instruct callers in the non-English languages on how to leave a recorded message that will be answered by someone who speaks the caller's language.

(8) **Signage and Other Outreach.** Other recipient or covered entities have provided information about services, benefits, eligibility requirements, and the availability of free language assistance, in appropriate languages by:

(a) Posting signs and placards with this information in public places such as grocery stores, bus shelters and subway stations;

(b) Putting notices in newspapers and on radio and television stations that serve LEP groups;

(c) Placing flyers and signs in the offices of community-based organizations that serve large populations of LEP persons; and

(d) Establishing information lines in appropriate languages.

e. **Model Plan.** The following is an example of a model language assistance program that is potentially useful for all recipient or covered entities, but is particularly appropriate for entities such as hospitals or social service agencies that serve a significant and diverse LEP population.

VHA DIRECTIVE 2002-006

January 31, 2002

This model plan incorporates a variety of options and methods for providing meaningful access to LEP beneficiaries to include:

- (1) A formal written language assistance program.
- (2) Identification and assessment of the languages that are likely to be encountered and estimating the number of LEP persons that are eligible for services and that are likely to be affected by its program through a review of census and client utilization data, and data from school systems and community agencies and organizations.
- (3) Posting of signs in lobbies and in other waiting areas, in several languages, informing applicants and clients of their right to free interpreter services and inviting them to identify themselves as persons needing language assistance.
- (4) Use of "I speak" cards by intake workers and other patient contact personnel so patients can identify their primary languages.
- (5) Requiring intake workers to note the language of the LEP person in the LEP person's record so that all staff can identify the language assistance needs of the client.
- (6) Employment of a sufficient number of staff, bilingual in appropriate languages, in patient and client contact positions such as intake workers, caseworkers, nurses, and doctors. These persons must be trained and competent as interpreters.
- (7) Contracts with interpreting services that can provide competent interpreters in a wide variety of languages in a timely manner.
- (8) Formal arrangements with community groups for competent and timely interpreter services by community volunteers.
- (9) An arrangement with a telephone language interpreter line.
- (10) Translation of application forms, instructional, informational and other key documents into appropriate non-English languages. Provision of oral interpreter assistance with documents, for those persons whose language does not exist in written form;
- (11) Procedures for effective telephone communication between staff and LEP persons, including instructions for English-speaking employees to obtain assistance from bilingual staff or interpreters when initiating or receiving calls from LEP persons.
- (12) Notice to and training of all staff, particularly patient and client contact staff, with respect to the recipient or covered entity's Title VI obligation to provide language assistance to LEP persons, and on the language assistance policies and the procedures to be followed in securing such assistance in a timely manner.

(13) Insertion of notices, in appropriate languages, about the right of LEP applicants and clients to free interpreters and other language assistance, in brochures, pamphlets, manuals, and other materials disseminated to the public and to staff.

(14) Notice to the public regarding the language assistance policies and procedures, and notice to and consultation with community organizations that represent LEP language groups, regarding problems and solutions, including standards and procedures for using their members as interpreters.

(15) Adoption of a procedure for the resolution of complaints regarding the provision of language assistance; and for notifying clients of their right to and how to file a complaint under Title VI with VHA.

(16) Appointment of a senior level employee to coordinate the language assistance program, and ensure that there is regular monitoring of the program.

f. **Compliance and Enforcement**

(1) The recommendations outlined above are not intended to be exhaustive. Recipient or covered entities have considerable flexibility in determining how to comply with their legal obligation in the LEP setting, and are not required to use all of the suggested methods and options listed. However, recipient or covered entities must establish and implement policies and procedures for providing language assistance sufficient to fulfill their Title VI responsibilities and provide LEP persons with meaningful access to services. VHA will enforce Title VI as it applies to recipient or covered entities' responsibilities to LEP persons through the procedures provided for in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance. The Title VI regulations provide that VHA will investigate whenever it receives a complaint, report or other information that alleges or indicates possible noncompliance with Title VI. If the investigation results in a finding of compliance, VHA will inform the recipient or covered entity in writing of this determination, including the basis for the determination. If the investigation results in a finding of noncompliance, VHA must inform the recipient or covered entity of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance, and must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, VHA must secure compliance through:

(a) The termination of Federal assistance after the recipient or covered entity has been given an opportunity for an administrative hearing;

(b) Referral to DOJ for injunctive relief or other enforcement proceedings; or

(c) Any other means authorized by law.

(2) As the Title VI regulations set forth above indicate, VHA has a legal obligation to seek voluntary compliance in resolving cases and cannot seek the termination of funds until it has

VHA DIRECTIVE 2002-006

January 31, 2002

engaged in voluntary compliance efforts and has determined that compliance cannot be secured voluntarily. VHA will engage in voluntary compliance efforts, and will provide technical assistance to recipients at all stages of its investigation. During these efforts to secure voluntary compliance, VHA will propose reasonable timetables for achieving compliance and will consult with and assist recipient or covered entities in exploring cost-effective ways of coming into compliance by sharing information on potential community resources, by increasing awareness of emerging technologies, and by sharing information on how other recipient or covered entities have addressed the language needs of diverse populations.

(3) VHA will focus its compliance review efforts primarily on larger recipient or covered entities such as community-managed organizations, state agencies, and social service organizations, that have a significant number or percentage of LEP persons eligible to be served, or likely to be directly affected, by the recipient or covered entity's program. In order to ensure compliance with Title VI, these recipient or covered entities will be expected to utilize a wider range of the language assistance options outlined in the preceding.

(4) The fact that VHA is focusing its investigative resources on larger recipient or covered entities with significant numbers or percentages of LEP persons likely to be served or directly affected, does not mean that other recipient or covered entities are relieved of their obligation under Title VI, or will not be subject to review by VHA. In fact, VHA has a legal obligation to promptly investigate all complaints alleging a violation of Title VI. All recipient or covered entities must take steps to overcome language differences that result in barriers and provide the language assistance needed to ensure that LEP persons have meaningful access to services and benefits. However, smaller recipient or covered entities -- such as sole practitioners, those with more limited resources, and recipient or covered entities who serve small numbers of LEP persons on an infrequent basis -- will have more flexibility in meeting their obligations to ensure meaningful access for LEP persons.

(4) In determining a recipient or covered entity's compliance with Title VI, VHA's primary concern is to ensure that the recipient or covered entity's policies and procedures overcome barriers resulting from language differences that would deny LEP persons a meaningful opportunity to participate in and access programs, services and benefits. A recipient or covered entity's appropriate use of the methods and options discussed in this policy guidance will be viewed by VHA as evidence of a recipient or covered entity's willingness to comply voluntarily with its Title VI obligations.

g. **Technical Assistance.** VHA will provide substantial technical assistance to recipient or covered entities, and will be available to provide such assistance to any recipient or covered entity seeking to ensure that it operates an effective language assistance program. In addition, during its investigative process, VHA is available to provide technical assistance to enable recipient or covered entities to come into voluntary compliance.

h. **Other**

(1) Attachment B is a summary, in question and answer format, of a number of the critical elements of this guidance, to assist recipient or covered entities further in understanding this guidance and their obligations under Title VI to ensure meaningful access to LEP persons. In addition, it contains a list of numerous provisions, including, but not limited to Federal and state laws and regulations, requiring the provision of language assistance to LEP persons in various circumstances. This list is not exhaustive, and is not limited to the medical service context.

(2) The DOJ directive has been issued contemporaneously with this policy guidance.

(3) The DOJ coordination regulations at 28 C.F.R. Section 42.405(d)(1) provide that "[w]here a significant number or proportion of the population eligible to be served or likely to be directly affected by a Federally-assisted program (e.g., affected by relocation) needs service or information in a language other than English in order effectively to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public."

(4) The Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, both provide similar prohibitions against discrimination on the basis of disability and require entities to provide language assistance such as sign language interpreters for hearing impaired individuals or alternative formats such as braille, large print or tape for vision impaired individuals. In developing a comprehensive language assistance program, recipient or covered entities should be mindful of their responsibilities under the ADA and Section 504 to ensure access to programs for individuals with disabilities.

(5) The "safe harbor" provisions are not intended to establish numerical thresholds for when a recipient must translate documents. The numbers and percentages included in these provisions are based on the balancing of a number of factors, and VHA's discussions with other Departments or agencies about experiences of their grant recipient or covered entities with language access issues.

(6) As noted, vital documents include applications, consent forms, letters containing information regarding eligibility or participation criteria, and notices pertaining to reduction, denial or termination of services or benefits, that require a response from beneficiaries, and/or that advise of free language assistance. Large documents, such as enrollment handbooks, may not need to be translated in their entirety. However, vital information contained in large documents must be translated.

(7) For instance, a Medicaid managed care program that regularly encounters, or potentially will encounter on a regular basis, LEP persons who speak dozens or perhaps over 100 different languages, would not be required to translate the lengthy program brochure into every regularly encountered language. Rather, the recipient or covered entity in these circumstances would likely be required to translate the written materials into the most frequently encountered languages. Regarding the remaining regularly encountered languages, the recipient or covered entity would be required to ensure that the LEP person receives written notification in the

VHA DIRECTIVE 2002-006

January 31, 2002

appropriate non-English language of the right to free oral translation of the written materials. In addition, the recipient or covered entity would frequently be required to provide written translations of vital documents that are short in length and pertain to important aspects of critical programs, such as a cover letter that outlines the terms and conditions of participation in a community managed care program, and/or contains time sensitive information about enrollment or continued participation.

ATTACHMENT B

**QUESTIONS AND ANSWERS REGARDING THE VHA OFFICE FOR CIVIL RIGHTS
POLICY GUIDANCE ON THE TITLE VI PROHIBITION AGAINST NATIONAL
ORIGIN DISCRIMINATION AS IT AFFECTS PERSONS WITH LIMITED ENGLISH
PROFICIENCY**

Question 1. What is the purpose of the guidance on language access?

Answer. This policy Guidance clarifies the responsibilities of providers of health and social services who receive Federal financial assistance from the Veterans Health Administration (VHA), and assists them in fulfilling their responsibilities to Limited English Proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964; and second, to clarify to members of the public that health service providers must ensure that LEP persons have meaningful access to their programs and services.

Question 2. What does the policy guidance do?

Answer. The policy guidance:

- (1) Reiterates the principles of Title VI with respect to LEP persons.
- (2) Discusses the policies, procedures and other steps that recipients can take to ensure meaningful access to their programs by LEP persons.
- (3) Clarifies that failure to take one or more of these steps does not necessarily mean noncompliance with Title VI.
- (4) Provides that VHA will determine compliance on a case-by-case basis, and that such assessments will take into account the size of the recipient, the size of the LEP population, the nature of the program, the resources available, and the frequency of use by LEP persons.
- (5) Provides that small providers and recipient or covered entities with limited resources will have a great deal of flexibility in achieving compliance.
- (6) Provides that VHA will provide technical assistance as needed by recipient or covered entities.

Question 3. Does the guidance impose new requirements on recipient or covered entities?

Answer. No. Since its enactment, Title VI of the Civil Rights Act of 1964 has prohibited discrimination on the basis of race, color or national origin in any program or activity that receives Federal financial assistance. In order to avoid violating Title VI, recipient or covered entities must ensure that they provide LEP persons meaningful opportunities to participate in their programs, services and benefits. Where such language differences prevent meaningful

VHA DIRECTIVE 2002-006

January 31, 2002

access on the basis of national origin, the law requires that recipients or covered entities provide oral and written language assistance at no cost to the LEP person. This guidance synthesizes the legal requirements that have been on the books for over 3 decades.

Question 4. Who is covered by the guidance?

Answer. Covered entities include any state or local agency, private institution or organization, or any public or private individual that (a) operates, provides or engages in health, or social service programs and activities, and (b) receives Federal financial assistance from VHA directly or through another recipient or covered entity. Examples of covered entities include but are not limited to: hospitals; nursing homes; home health agencies; managed care organizations; universities and other entities with health or social service research programs; state, county and local health agencies; state Medicaid agencies; public and private contractors, subcontractors and vendors; physicians; and other providers who receive Federal financial assistance from VHA.

Question 5. How does the guidance affect small practitioners and providers?

Answer. The key to providing meaningful access for LEP persons is to ensure that the relevant circumstances of the LEP person's situation can be effectively communicated to the service provider and the LEP person is able to understand the services and benefits available and is able to receive those services and benefits for which the LEP person is eligible, in a timely manner. Small practitioners and providers will have considerable flexibility in determining precisely how to fulfill their obligations to ensure meaningful access for persons with limited English proficiency. VHA will assess compliance on a case-by-case basis and will take into account the size of the recipient or covered entity, the size of the eligible LEP population it serves, the nature of the program or service, the objectives of the program, the total resources available to the recipient or covered entity, the frequency with which languages are encountered and the frequency with which LEP persons come into contact with the program. There is no "one size fits all" solution for Title VI compliance with respect to LEP persons.

NOTE: *In other words, VHA will focus on the end result, that is, whether the small practitioner or provider has taken steps, given the factors that will be considered by VHA, to ensure that the LEP persons have access to the programs and services provided by the physician. VHA will be available to provide technical assistance to any physician seeking to ensure that any physician operates an effective language assistance program. For example, a physician, a sole practitioner, has about 50 LEP Hispanic patients. This physician has a staff of two nurses and a receptionist, derives a modest income from his practice, and receives Medicaid funds. This physician asserts that it is not affordable to hire bilingual staff, contract with a professional interpreter service, or translate written documents. To accommodate the language needs of this physician's LEP patients, this physician has made arrangements with a Hispanic community organization for trained and competent volunteer interpreters and with a telephone interpreter language line, to interpret during consultations and to orally translate written documents. Given the physician's resources, the size of this physician's staff, and the size of the LEP population, VHA would find the physician in compliance with Title VI.*

Question 6. The guidance identifies some specific circumstances under which VHA will consider a program to be in compliance with its obligation under Title VI to provide written materials in languages other than English. Does this mean that a recipient or covered entity will be considered out of compliance with Title VI if its program does not fall within these circumstances?

Answer. No. The circumstances outlined in the guidance are intended to provide a "safe harbor" for recipients who desire greater certainty with respect to their obligations to provide written translations. Thus, a recipient or covered entity whose policies and practices fall within these circumstances can be confident that, with respect to written translations, it will be found in compliance with Title VI. However, the failure to fall within the "safe harbors" outlined in the guidance does not necessarily mean that a recipient or covered entity is not in compliance with Title VI. In such circumstances, VHA will review the totality of circumstances to determine the precise nature of a recipient or covered entity's obligation to provide written materials in languages other than English. If translation of a certain document or set of documents would be so financially burdensome as to defeat the legitimate objectives of its program, or if there is an alternative means of ensuring that LEP persons have meaningful access to the information provided in the document (such as timely, effective oral interpretation of vital documents), VHA will likely not find the translation necessary for compliance with Title VI.

Question 7. The guidance makes reference to "vital documents" and notes that, in certain circumstances, a recipient or covered entity may have to translate such documents into other languages. What is a vital document?

Answer. Given the wide array of programs and activities receiving VHA financial assistance, we do not attempt to identify vital documents and information with specificity in each program area. Rather, a document or information should be considered vital if it contains information that is critical for accessing the federal fund recipient's services and/or benefits, or is required by law. Thus, vital documents include, but are not limited to, applications, consent forms, letters and notices pertaining to the reduction, denial or termination of services or benefits, letters or notices that require a response from the beneficiary or client, and documents that advise of free language assistance. VHA will also collaborate with respective offices in determining which documents and information are deemed to be vital within a particular program.

Question 8. Will the recipient or covered entities have to translate large documents such as books?

Answer. Not necessarily. As part of its overall language assistance program, a recipient must develop and implement a plan to provide written materials in languages other than English where a significant number or percentage of the population eligible to be served, or likely to be directly affected by the program, needs services or information in a language other than English to communicate effectively. VHA will assess the need for written translation of documents and vital information contained in larger documents on a case-by-case basis, taking into account all relevant circumstances, including the nature of the recipient or covered entity's services or

VHA DIRECTIVE 2002-006

January 31, 2002

benefits, the size of the recipient or covered entity, the number and size of the LEP language groups in its service area, the nature and length of the document, the objectives of the program, the total resources available to the recipient or covered entity, the frequency which particular languages are encountered and the frequency with which translated documents are needed and the cost of translation. Depending on these circumstances, large documents, such as enrollment handbooks, may not need to be translated or may not need to be translated in their entirety. For example, a recipient or covered entity may be required to provide written translations of vital information contained in larger documents, but may not have to translate the entire document, to meet its obligations under Title VI.

Question 9. May a recipient or covered entity require an LEP person to use a family member or a friend as an interpreter?

Answer. No. VHA's policy requires the recipient or covered entity to inform the LEP person of the right to receive free interpreter services first and permits the use of family and friends only after such offer of assistance has been declined and documented. VHA policy regarding the use of family and friends as interpreters is based on over 3 decades of experience with other Federal agencies with Title VI. Although VHA recognizes that some individuals may be uncomfortable having a stranger serve as an interpreter, especially when the situation involves the discussion of very personal or private matters, family and friends frequently are not competent to act as interpreters, since they may be insufficiently proficient in both languages, untrained and unskilled as interpreters, and unfamiliar with specialized terminology. Use of such persons also may result in breaches of confidentiality or reluctance on the part of the individual to reveal personal information critical to their situations. These concerns are even more pronounced when the family member called upon to interpret is a minor. In other words, when family and friends are used, there is a grave risk that interpretation may not be accurate or complete. In medical settings, in particular, this can result in serious, even life threatening consequences.

Question 10. How does low health literacy, non-literacy, non-written languages, blindness and deafness among LEP populations affect the responsibilities of Federal fund recipients?

Answer. Effective communication in any language requires an understanding of the literacy levels of the eligible populations. However, literacy generally is a program operations issue rather than a Title VI issue. Where an LEP individual has a limited understanding of health matters or cannot read, access to the program is complicated by factors not directly related to national origin or language. Under these circumstances, a recipient or covered entity should provide remedial health information to the same extent that it would provide such information to English-speakers. Similarly, a recipient or covered entity should assist LEP individuals who cannot read in understanding written materials as it would non-literate English-speakers. A non-written language precludes the translation of documents, but does not affect the responsibility of the recipient to communicate the vital information contained in the document or to provide notice of the availability of oral translation. Section 504 of the Rehabilitation Act of 1973 requires that Federal fund recipients provide sign language and oral interpreters for people who

January 31, 2002

have hearing impairments and provide materials in alternative formats such as in large print, braille or on tape for individuals with impairments. The Americans with Disabilities Act imposes similar requirements on health and human service providers.

Question 11. Can VHA provide help to a recipient or covered entities who wish to come into compliance with Title VI?

Answer. Absolutely. VHA will provide technical assistance to a recipient or covered entities who are seeking to ensure that LEP persons can meaningfully access their programs or services. VHA is prepared to work with recipients to help them meet their obligations under Title VI. As part of its technical assistance services, VHA can help identify best practices and successful strategies used by other Federal fund recipients, identify sources of Federal reimbursement for translation services, and point providers to other resources.

Question 12. How will VHA enforce compliance by recipient or covered entities with the LEP requirements of Title VI?

Answer. VHA will enforce Title VI as it applies to recipient or covered entities through the procedures provided for in the Title VI regulations. The Title VI regulations provide that VHA will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI. If the investigation results in a finding of compliance, VHA will inform the recipient or covered entity in writing of this determination, including the basis for the determination. If the investigation results in a finding of noncompliance, VHA must inform the recipient or covered entity of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. By regulation, VHA must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, VHA must secure compliance through (1) the termination of Federal assistance after the recipient or covered entity has been given an opportunity for an administrative hearing, (2) referral to the Department of Justice (DOJ) for injunctive relief or other enforcement proceedings, or (3) any other means authorized by law.

Question 13. Does issuing this guidance mean that VHA will be changing how it enforces compliance with Title VI?

Answer. No. How VHA enforces Title VI is governed by the Title VI implementing regulations. The methods and procedures used to investigate and resolve complaints, and conduct compliance reviews, have not changed.

Question 14. What is VHA doing to ensure it is following the guidance it is giving to States and others?

Answer. Although legally Federally conducted programs and activities are not subject to Title VI, VHA recognizes the importance of ensuring that its programs and services are accessible to LEP persons. To this end, VHA may establish a working group to assess how it is

VHA DIRECTIVE 2002-006

January 31, 2002

providing language access. Staff offices across VHA may have to take a number of important steps to ensure that their programs and services are accessible to LEP persons. For example, offices may have to ensure that entities translate important consumer materials into languages other than English or launch Spanish language web sites. In order to ensure that all VHA Federally-conducted programs and activities are accessible to LEP persons, the Under Secretary for Health will amend agency policy to ensure LEP persons have meaningful access to programs. This internal VHA initiative was begun prior to the President's August 11, 2000, Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." The Executive Order requires Federal Agencies to develop and implement a system for ensuring LEP persons meaningful access to their Federally-conducted programs. It also requires agencies to issue guidance to their recipients on the recipients' obligations to provide LEP persons meaningful access to their Federally-assisted programs. VHA is a step ahead on each of the obligations outlined in the Executive Order.

ATTACHMENT C

SELECTED FEDERAL AND STATE LAWS AND REGULATIONS REQUIRING
LANGUAGE ASSISTANCE

1. Federal Laws and Regulations. Federal laws that recognize the need for language assistance include:

a. The Voting Rights Act, which bans English-only elections and prescribes other remedial devices to ensure nondiscrimination against language minorities.

b. The Food Stamp Act of 1977, which requires states to provide written and oral language assistance to LEP persons under certain circumstances.

c. Judicial procedure laws that require the use of certified or otherwise qualified interpreters for LEP parties and witnesses, at the government's expense, in certain proceedings.

d. The Older Americans Act, which requires state planning agencies to use outreach workers who are fluent in the languages of older LEP persons, where there is a substantial number of such persons in a planning area.

e. The Substance Abuse and Mental Health Administration Reorganization Act, which requires services provided with funds under the statute to be bilingual if appropriate.

f. The Disadvantaged Minority Health Improvement Act, which requires the Office of Minority Health (OMH) to enter into contracts to increase the access of LEP persons to health care by developing programs to provide bilingual or interpreter services.

g. The Equal Educational Opportunities Act of 1974, which requires educational agencies to take appropriate action to accommodate the language differences that impede equal participation by students in instructional programs.

2. State Laws and Regulations. Many states have recognized the seriousness of the language access challenge and have enacted laws that require providers to offer language assistance to LEP persons in many service settings. States that require language assistance include:

a. California, which provides that intermediate care facilities must use interpreters and other methods to ensure adequate communication between staff and patients.

b. New Jersey, which provides that drug and alcohol treatment facilities must provide interpreter services if their patient population is non-English speaking.

c. Pennsylvania, which provides that a patient who does not speak English should have access, where possible, to an interpreter.

January 31, 2002

d. Massachusetts, which in April 2000, enacted legislation that requires every acute care hospital to provide competent interpreter services to LEP patients in connection with all emergency room services.

3. Medical Accreditation Organizations

a. The Joint Committee on Accreditation of Healthcare Organizations (JCAHO), which accredits hospitals and other health care institutions, requires language assistance in a number of situations. For example, its accreditation manual for hospitals provides that written notice of patients' rights must be appropriate to the patient's age, understanding and language.

b. The National Committee for Quality Assurance (NCQA), which provides accreditation for managed care organizations, also requires language assistance in a variety of settings. As part of its evaluation process, the NCQA assesses managed care member materials to determine whether they are available in languages, other than English, spoken by major population groups.

4. Other Applicable Laws, Regulations, and Legislation

a. Title 42 U.S.C. Section 1973 b(f)(1).

b. Title 7 U.S.C. Section 2020(e)(1)and(2)(A).

c. Title 28 U.S.C. Section 1827 (d)(1)(A).

d. Title 42 U.S.C. Section 3027 (a) (20)(A).

d. Title 42 U.S.C. Section 290aa(d) (14).

f. Title 42 U.S.C. Section 300u-6 (b) (7).

g. Title 20 U.S.C. Section 1703 (f).

h. Title 42 CFR Section 483.128 (b).

i. At least twenty-six states and the District of Columbia have enacted legislation requiring language assistance, such as interpreters and/or translated forms and other written materials, for LEP persons.

j. **22 California Code of Regulations, Section 73501.** California has a wide array of other laws and regulations that require language assistance, including those that require:

(a) Intermediate nursing facilities to use interpreters and other methods to ensure adequate communication with patients,

(b) Adult day care centers to employ ethnic and linguistic staff as indicated by participant characteristics,

(c) Certified interpreters for non-English speaking persons at administrative hearings, and

(d) Health licensing agencies to translate patients rights information into every language spoken by one percent or more of the nursing home population.

k. New Jersey Administrative Code Section 42A-6.7.

l. 28 Pennsylvania Administrative Code Section 103.22(b)(14).

m. M.G.L.A. 111, Section 25J

n. JCAHO, 1997 Accreditation Manual for Hospitals, Section R1.1.4.

o. NCQA, 1997 Accreditation Standards, RR 6.2.

ATTACHMENT D

**DEPARTMENT OF VETERANS AFFAIRS FEDERALLY-ASSISTED PROGRAMS
AND ACTIVITIES**

***NOTE:** This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department of Veterans Affairs, including the Federally-assisted programs and activities listed in Title 38 Code of Federal Regulations (CFR), Part 18, Subparts A, D, E, and to Federally-conducted programs and activities covered under Part 15.*

1. Payments to State homes (Title 38 United States Code (U.S.C.) 1741-1743).
2. State home facilities for furnishing domiciliary, nursing home, and hospital care (38 U.S.C. 8131-8137).
3. Space and office facilities for representatives of recognized national organizations (38 U.S.C. 5902(a)(2)).
4. All-volunteer force educational assistance, vocational rehabilitation, post-Vietnam era veterans' educational assistance, survivors' and dependents' educational assistance, and administration of educational benefits (38 U.S.C. Chapters 30, 31, 32, 34, 35, and 36, respectively).
5. Sharing of medical facilities, equipment, and information (38 U.S.C. 8151-8157).
6. Approval of educational institutions (38 U.S.C. 104).
7. Space and office facilities for representatives of State employment services (38 U.S.C. 7725(1)).
8. Medical care for survivors and dependents of certain veterans (38 U.S.C. 1713).
9. Transfers for nursing home care; adult day health care (38 U.S.C. 1720).
10. Treatment and rehabilitation for alcohol or drug dependence or abuse disabilities (38 U.S.C. 1720A).
11. Aid to States for establishment, expansion, and improvement of veterans cemeteries (38 U.S.C. 2408).
12. Assistance in establishing new medical schools; grants to affiliated medical schools; assistance to health manpower training institutions (38 U.S.C. Chapter 82).

VHA DIRECTIVE 2002-006

January 31, 2002

13. Department of Veterans Affairs health professional scholarship program (38 U.S.C. 7601-7655).
14. Emergency veterans job training (Public Law 98-77, 97 Statues 443-452).

ATTACHMENT E

**GUIDANCE FOR EXECUTIVE ORDER 13166, LIMITED ENGLISH PROFICIENCY
(LEP)**

**TITLE VI PROHIBITION AGAINST NATIONAL ORIGIN DISCRIMINATION IN
FEDERALLY-CONDUCTED PROGRAMS AND ACTIVITIES**

1. BACKGROUND

a. On August 11, 2000, the President issued Executive Order 13166, entitled "Improving Access to Services for Persons with Limited English Proficiency." The Executive Order (E.O.) directs each Federal agency that conducts programs to develop and submit to the Department of Justice (DOJ) for review and approval, after consultations with relevant stakeholders, agency-specific guidance on services to individuals with limited English proficiency (LEP). The Veterans Health Administration (VHA) is covered under the E. O. because it receives an annual budget from the Department of Veterans Affairs to conduct its programs and activities for veterans and others.

b. On September 23, 1999, VHA Directive 99-043, Nondiscrimination in Federally-conducted and Federally-Assisted (External) Programs was issued. The Directive implements an external civil rights program that will be utilized to process civil rights discrimination complaints filed alleging violations of the obligations outlined in the Executive Order. The Directive became effective prior to issuance of the Executive Order on August 11, 2000. VHA Directive 99-043 is based on several civil rights regulations. The Directive was amended to require each facility Equal Employment Opportunity and/or Affirmative Employment Specialist to investigate a complaint, report, or other information that alleges or indicates possible noncompliance with LEP guidance. The Executive Order requires VHA to develop and implement a system for ensuring LEP persons meaningful access to Federally-conducted programs. The Executive Order also requires VHA to issue guidance to its recipients on the recipients' obligations to provide LEP persons meaningful access to their Federally-assisted programs. LEP guidance on Federally-assisted programs was issued under separate cover.

c. The lack of language assistance capability among Department employees may have adverse consequences in the delivery of health care services. This essential exchange of information is difficult when the two parties involved speak different languages; it may be impeded further by the presence of an unqualified third person that attempts to serve as an interpreter. The Executive Order requires equal access to Federally-conducted programs and activities. Services denied, delayed or provided under adverse circumstances will constitute discrimination on the basis of national origin, in violation of the Executive Order. Accommodation of language differences through the provision of effective language assistance will promote compliance with the Executive Order.

d. This attachment is consistent with and incorporates Department of Justice (DOJ) policy noting that Federally-conducted programs and activities have an obligation to prohibit national

VHA DIRECTIVE 2002-006

January 31, 2002

origin discrimination and to provide oral and written language assistance to LEP persons. It is also consistent with a Government-wide Title VI regulation issued by DOJ in 1976, "Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs," Title 28 Code of Federal Regulations (CFR) Part 42, Subpart F, that addresses the circumstances in which recipient/covered entities must provide written language assistance to LEP persons.

2. AUTHORITY

a. Introduction

(1) The authority for VHA enforcement actions is Executive Order 13166. Executive Order 13166 prohibits both intentional discrimination and policies and practices that appear neutral but have a discriminatory effect. Thus, a covered entity's policies or practices regarding the provision of benefits and services to LEP persons need not be intentional to be discriminatory, but may constitute a violation of the Executive Order if they have an adverse effect on the ability of national origin minorities to meaningfully access programs and services. Accordingly, it is useful for covered programs to examine their policies and practices to determine whether they adversely affect LEP persons. This policy guidance provides a legal framework to Federally-conducted programs and activities in conducting such assessments

(2) It is VHA policy that no one shall be subjected to any form of discrimination because of race, color, national origin, age, sex, handicap, or reprisal in any and all VHA programs, or in programs receiving VA funding, or in any VA program receiving Federal financial assistance.

b. State or Local "English-Only" Laws. State or local "English-only" laws do not supersede Federal law on Federal installations. VHA facilities cannot discriminate in violation of the Executive Order. VHA facilities in states and localities with "English-only" laws do not have to abide by those laws. However, if they do, they have to comply with the Executive Order, including its prohibition against national origin discrimination.

c. Policy Guidance

(1) Who is Covered

(a) All programs and activities at the facility and VHA Central Office levels that are operated with VA funds, either directly or indirectly, through a grant, contract, or subcontract, are covered by this policy guidance.

(b) Covered entities include any health, or social service program and activity, state or local agency, private institution or organization, or any public or private individual that operates, provides or engages in activity that receives Federal financial assistance from VA directly or through another covered entity.

(c) Examples of covered entities include, but are not limited to: VA medical centers; outpatient clinics; nursing homes; readjustment counseling veterans centers; community-based

care services; domiciliaries; home health agencies; managed care organizations; universities; and other entities with health or social service research programs.

(2) Basic Requirements Under Executive Order 13166

(a) A covered program or activity whose policies, practices or procedures exclude, limit, or have the effect of excluding or limiting, the participation of any LEP person in a Federally-conducted program on the basis of national origin may be engaged in discrimination in violation of the E.O. In order to ensure compliance, covered programs or activities must take steps to ensure that LEP persons who are eligible for their programs or services have meaningful access to the health and social service benefits that they provide. The most important step in meeting this obligation is for Federally-conducted programs or activities to provide the language assistance necessary to ensure such access, at no cost to the LEP person.

(b) The type of language assistance a covered program or activity provides to ensure meaningful access will depend on a variety of factors, including the total resources and size of the covered program or activity, the number or proportion of the eligible LEP population it serves, the nature and importance of the program or service, including the objectives of the program, and the frequency with which particular languages are encountered, and the frequency with which LEP persons come into contact with the program. These factors are consistent with and incorporate the standards set forth in the Department of Justice “Policy Guidance Document: on Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons With Limited English Proficiency (LEP Guidance),” reprinted at 65 FR 50123 (August 16, 2000). VHA facilities will make assessments of the language assistance needed to ensure meaningful access on a case-by-case basis, and a covered program or activity will have considerable flexibility in determining precisely how to fulfill this obligation. VHA facilities will focus on the end result whether the covered program or activity has taken the necessary steps to ensure that LEP persons have meaningful access to its programs and services.

(c) The key to providing meaningful access for LEP persons is to ensure that the covered program or activity and LEP person can communicate effectively. The steps taken by a covered program or activity must ensure that the LEP person is given adequate information, is able to understand the services and benefits available, and is able to receive those for which he or she is eligible. The covered program or activity must also ensure that the LEP person can effectively communicate the relevant circumstances of his or her situation to the service provider.

(d) In enforcing the E.O. and its application to LEP, it has been found that effective language assistance programs usually contain the four elements described in section three below. In reviewing complaints and conducting compliance reviews, a program will be considered to be in compliance when the covered program or activity effectively incorporates and implements these four elements. The failure to incorporate or implement one or more of these elements does not necessarily mean noncompliance with the E.O., and VHA will review the totality of the circumstances to determine whether LEP persons can meaningfully access the services and benefits of the covered program or activity.

(3) Ensuring Meaningful Access to LEP Persons

January 31, 2002

(a) Introduction - The Four Keys to Title VI Compliance In the LEP Context

1. The key to providing meaningful access to benefits and services for LEP persons is to ensure that the language assistance provided results in accurate and effective communication between the provider and LEP applicant's or client's circumstances. Although programs or activities have considerable flexibility in fulfilling this obligation, it has been found that effective programs usually have the following four elements:

a. Assessment. The covered program or activity conducts a thorough assessment of the language needs of the population to be served;

b. Development of Comprehensive Written Policy on Language Access. The covered program or activity develops and implements a comprehensive written policy that will ensure meaningful communication;

c. Training of Staff. The covered program or activity takes steps to ensure that staff understands the policy and is capable of carrying it out; and

d. Vigilant Monitoring. The covered program or activity conducts regular oversight of the language assistance program to ensure that LEP persons meaningfully access the program.

2. The failure to implement one or more of these measures does not necessarily mean noncompliance with the E.O., and VHA will review the totality of the circumstances in each case. If implementation of one or more of these options would be so financially burdensome as to defeat the legitimate objectives of a covered program or activity, or if there are equally effective alternatives for ensuring that LEP persons have meaningful access to programs and services, VHA will not find the covered program or activity in noncompliance.

(b) Assessment. The first key to ensuring meaningful access is for the covered program or activity to assess the language needs of the affected population. A covered program or activity assesses language need by:

1. Identifying the non-English languages that are likely to be encountered in its program and by estimating the number of LEP persons that are eligible for services and that are likely to be directly affected by its program. This can be done by reviewing census data, client utilization data from client files and data from school systems and community agencies and organizations;

2. Identifying the language needs of each LEP patient or client and recording this information in the client's file;

3. Identifying the points of contact in the program or activity where language assistance is likely to be needed;

4. Identifying the resources that will be needed to provide effective language assistance;

5. Identifying the location and availability of these resources; and
6. Identifying the arrangements that must be made to access these resources in a timely fashion.

(4) Development of Comprehensive Written Policy on Language Access

(a) A covered program or activity can ensure effective communication by developing and implementing a comprehensive written language assistance program that includes policies and procedures of identifying and assessing the language needs of its LEP applicants or clients, and that provides for a range of oral language assistance options, notice to LEP persons in a language they can understand of the right to free language assistance, periodic training of staff, monitoring of the program, and translation of written materials in certain circumstances.

1. Oral Language Interpretation. In designing an effective language assistance program, a covered program or activity develops procedures for obtaining and providing trained and competent interpreters and other oral language assistance services, in a timely manner, by taking some or all of the following steps:

- a. Hiring bilingual staff who are trained and competent in the skill of interpreting;
- b. Hiring staff interpreters who are trained and competent in the skill of interpreting;
- c. Contracting with an outside interpreter service for trained and competent interpreters;
- d. Arranging formally for the services of voluntary community interpreters who are trained and competent in the skill of interpreting;
- e. Arranging and/or contracting for the use of a telephone language interpreter service.

NOTE: *The following provides guidance to covered programs or activities in determining which language assistance options will be of sufficient quantity and quality to meet the needs of their LEP beneficiaries:*

2. Bilingual Staff. Hiring bilingual staff for patient and client contact positions facilitates participation by LEP persons. However, where there are a variety of LEP language groups in a program's or an activity's service area, this option may be insufficient to meet the needs of all LEP applicants and clients. Where this option is insufficient to meet the needs, the covered program or activity must provide additional and timely language assistance. Bilingual staff must be trained and must demonstrate competence as interpreters.

3. Staff Interpreters. Paid staff interpreters are especially appropriate where there is a frequent and/or regular need for interpreting services. These persons must be competent and readily available.

VHA DIRECTIVE 2002-006

January 31, 2002

4. Contract Interpreters. The use of contract interpreters may be an option for covered programs or activities that have an infrequent need for interpreting services, have less common LEP language groups in their service areas, or need to supplement their in-house capabilities on an as needed basis. Such contract interpreters must be readily available and competent.

5. Community Volunteers. Use of community volunteers may provide covered programs or activities with a cost-effective method for providing interpreter services. However, experience has shown that to use community volunteers effectively, covered programs or activities must ensure that formal arrangements for interpreting services are made with community organizations so that these organizations are not subjected to ad hoc requests for assistance. In addition, covered programs or activities must ensure that these volunteers are competent as interpreters and understand their obligation to maintain client confidentiality. Additional language assistance must be provided where competent volunteers are not readily available during all hours of service.

6. Telephone Interpreter Lines. A telephone interpreter service line may be a useful option as a supplemental system, or may be useful when a covered program or activity encounters a language that it cannot otherwise accommodate. Such a service often offers interpreting assistance in many different languages and usually can provide the service in quick response to a request. However, the covered program or activity should be aware that such services may not always have readily available interpreters who are familiar with the terminology peculiar to the particular program or service. It is important that a covered program or activity not offer this as the only language assistance option except where other language assistance options are unavailable (e.g., in a rural clinic visited by an LEP patient who speaks a language that is not usually encountered in the area).

7. Translation of Written Materials. An effective language assistance program ensures that written materials that are routinely provided in English to applicants, clients and the public are available in regularly encountered languages other than English. It is particularly important to ensure that vital documents, such as applications; consent forms; letters containing important information regarding participation in a program; notices pertaining to their education; denial or termination of services or benefits; of the right to appeal such actions or that require a response from beneficiaries; notices advising LEP persons of the availability of free language assistance; and other outreach materials be translated into the non-English language of each regularly encountered LEP group eligible to be served or likely to be directly affected by the covered program or activity.

(b) As part of its overall language assistance program, a program or activity must develop and implement a plan to provide written materials in languages other than English where a significant number or percentage of the population eligible to be served or likely to be directly affected by the program needs services or information in a language other than English to communicate effectively. VHA will determine the extent of the covered program's/activity's obligation to provide written translation of documents on a case-by-case basis, taking into account all relevant circumstances, including the nature of the covered program's/activity's services or benefits; the size of the covered program or activity; the number and size of the LEP language groups in its service area; the nature and length of the document; the objectives of the

program; the total resources available to the covered program or activity; the frequency with which translated documents are needed and the cost of translation.

(c) One way for a covered program or activity to know with greater certainty that it will be found in compliance with its obligation to provide written translations in languages other than English is for the covered program or activity to meet the guidelines outlined in following subparagraph 2c(4)(c)1. and subparagraph 2c(4)(c)2. Subparagraph 2c(4)(c)1. and subparagraph 2c(4)(c)2. outline the circumstances that provide a "safe harbor" for covered programs or activities. A covered program or activity that provides written transactions under these circumstances can be confident that it will be found in compliance with its obligation under the E.O. regarding written translations. However, the failure to provide written translations under these circumstances outlined in subparagraph 2c(4)(c)1. and subparagraph 2c(4)(c)2. will not necessarily mean noncompliance with the E.O. In such circumstances, VHA will review the totality of the circumstances to determine the precise nature of a covered program's or an activity's obligation to provide written materials in languages other than English. If written translation of a certain document or set of documents would be so financially burdensome as to defeat the legitimate objectives of its program, or if there is an alternative means of ensuring that LEP persons have meaningful access to the information provided in the document (such as timely, effective oral interpretation of vital documents), VHA will not find the translation to written materials necessary for compliance with the E.O. VHA will consider a covered program or activity to be in compliance with its LEP obligation to provide written materials in non-English languages if:

1. The covered program or activity provides translated written materials, including vital documents, for each eligible LEP language group that constitutes ten percent or 3,000, whichever is less, of the population of persons eligible to be served or likely to be directly affected by the covered program or activity;

2. LEP language groups that do not fall within paragraph (A) above, but constitute five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be directly affected, the covered program or activity ensures that, at a minimum, vital documents are translated into the appropriate non-English languages of such LEP persons. Translation of other documents, if needed, can be provided orally; and

3. Notwithstanding preceding subparagraph 2c(4)(c)1. and subparagraph 2c(4)(c)2., a covered program or activity with fewer than 100 persons in a language group eligible to be served or likely to be directly affected by the covered program or activity, does not translate written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral translation of written materials.

NOTE: The term "persons eligible to be served or likely to be directly affected" relates to the issue of what is the covered program's or an activity's service area for purposes of meeting its LEP obligation. There is no "one size fits all" definition of what constitutes "persons eligible to be served or likely to be directly affected" and VHA facilities will address this issue on a case-by-case basis.

VHA DIRECTIVE 2002-006

January 31, 2002

(d) Ordinarily, persons eligible to be in or likely to be directly affected by a program or activity are those persons who have been approved to participate in an agency covered program or activity, and who either are eligible for the covered program's or an activity's benefits or services, or otherwise might be directly affected by such a program's or an activity's conduct. For example, a veteran who might seek medical care or a family member accompanying the veteran who might be directly affected would be seen as likely to be covered by a program's or an activity's policies and practices. VHA will determine the person's eligible to be served as those approved to participate in an agency covered program or activity itself, provided that these designations do not themselves discriminatorily exclude certain populations. The following are examples of how VHA would determine who is eligible to be served or likely to be affected:

1. A complaint filed with VHA alleges that a program or activity discriminates against Hispanic or Native American LEP veterans by failing to provide such persons with language assistance, including written translations of consent forms. The program or activity determines that a substantial number of the program's or an activity's veterans are identified as Hispanic or Native American and that no other racial, ethnic or other minorities is discriminatorily excluded from the plan. VHA is likely to accept the complaint as being relevant to the program or activity.

2. The spouse or child of a veteran who receives health services under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) alleges that physicians and nurses do not understand their language and misinterprets their medical problems. VHA is likely to require the program or activity to provide qualified interpreters to provide assistance to affected beneficiaries.

(e) As this guidance notes, the E.O. provides that no person may be denied meaningful access to a covered program's or an activity's benefits and services, on the basis of national origin. To comply with the E.O. requirement, a covered program or activity must ensure that LEP persons have meaningful access to and can understand information contained in program-related written documents. Thus, for language groups that do not fall within paragraphs (A) and (B) above, a program or activity can ensure such access by, at a minimum, providing notice in writing, in the LEP person's primary language, of the right to receive free language assistance in a language other than English, including the right to competent oral translation of written materials, free of cost.

(f) Recent technological advances have made it easier for covered programs or activities to store translated documents readily. At the same time, VHA recognizes that covered programs or activities in a number of areas, such as many large cities, regularly serve LEP persons from many different areas of the world who speak dozens and sometimes over 100 different languages. As a result, VHA will determine the extent of the covered program's or an activity's obligation to provide written translations of documents on a case-by-case basis, looking at the totality of the circumstances.

(g) It is also important to ensure that the person translating the materials is well qualified. In addition, it is important to note that in some circumstances verbatim translation of materials may not accurately or appropriately convey the substance of what is contained in the written

materials. An effective way to address this potential problem is to reach out to community-based organizations to review translated materials to ensure that they are accurate and easily understood by LEP persons.

(h) Methods for Providing Notice to LEP Persons. A vital part of a well functioning compliance program include having effective methods for notifying LEP persons regarding their right to language assistance and the availability of such assistance free of charge. These methods include but are not limited to:

(i) Use of language identification cards that allow LEP beneficiaries to identify their language needs to staff and for staff to identify the language needs of applicants and clients. To be effective, the card (e.g., "I speak cards") must invite the LEP person to identify the language the person speaks. This identification must be recorded in the LEP person's file;

(j) Posting and maintaining signs in regularly encountered languages other than English in waiting rooms, reception areas and other initial points of entry. In order to be effective, these signs must inform applicants and beneficiaries of their right to free language assistance services and invite them to identify themselves as persons needing such services;

(k) Translation of application forms and instructional, informational and other written materials into appropriate non-English languages by competent translators. For LEP persons whose language does not exist in written form, assistance from an interpreter to explain the contents of the document;

(l) Uniform procedures for timely and effective telephone communication between staff and LEP persons. This must include instructions for English-speaking employees to obtain assistance from interpreters or bilingual staff when receiving calls from or initiating calls to LEP persons; and inclusion of statements about the services available and the right to free language assistance services, in appropriate non-English languages, in brochures, booklets, outreach and recruitment information and other materials that are routinely disseminated to the public.

(5) **Training of Staff.** Other vital elements in ensuring that its policies are followed is a covered program's or an activity's dissemination of its policy to all employees likely to have contact with LEP persons, and periodic training of these employees. Effective training ensures that employees are knowledgeable and aware of LEP policies and procedures, are trained to work effectively with in-person and telephone interpreters, and understand the dynamics of interpretation between clients, providers and interpreters. It is important that this training be part of the orientation for new employees and that all employees in client contact positions be properly trained. Given the high turnover rate among some employees, covered programs or activities may find it useful to maintain a training registry that records the names and dates of employee's training. Effective training is one means of ensuring that there is not a gap between a covered program's or an activity's written policies and procedures, and the actual practices of employees who are in the front lines interacting with LEP persons.

(6) **Vigilant Monitoring**

VHA DIRECTIVE 2002-006

January 31, 2002

(a) It is recommended that covered programs or activities review their language assistance programs at least annually. This should be done to assess the current LEP makeup of its services provided and the current communication needs of LEP applicants and clients. A determination should also be made as to whether existing assistance is meeting the needs of such persons, whether staff is knowledgeable about policies and procedures and how to implement them, and whether sources of and arrangements for assistance are still current and viable. One element of such an assessment is for a covered program or activity to seek feedback from clients and advocates. Compliance with the E.O. language assistance obligation is most likely when a covered program or activity continuously monitors its program, makes modifications where necessary, and periodically trains employees in implementation of the policies and procedures.

(b) The failure to take all the steps outlined above will not necessarily mean that a covered program or activity has failed to provide meaningful access to LEP clients. Several factors should be taken into consideration when making an assessment of whether the steps taken by a covered program or activity provide meaningful access. Those factors include the size of the covered program or activity and of the eligible LEP population; the nature of the program or service; the objectives of the program; the total resources available; the frequency with which particular languages are encountered; and the frequency with which LEP persons come into contact with the program.

d. **Interpreters.** A covered program or activity must ensure that those persons it provides as interpreters are trained and demonstrate competency as interpreters. Competency does not necessarily mean formal certification as an interpreter, though certification is helpful. On the other hand, competency requires more than self-identification as bilingual. The competency requirement contemplates demonstrated proficiency in both English and the other language. It also includes orientation and training that includes the skills and ethics of interpreting (e.g., issues of confidentiality and consent), fundamental knowledge in both languages of any specialized terms, or concepts peculiar to the covered program's or activity's sensitivity to the LEP person's culture and a demonstrated ability to convey information in both languages accurately. A covered program or activity may expose itself to liability under Title VI if it requires, suggests, or encourages an LEP person to use friends, minor children, or family members as interpreters, as this could compromise the effectiveness of the service.

(1) **Use of Friends, Family, and Minor Children as Interpreters.** A covered program or activity may expose itself to noncompliance under the E.O. if it requires, suggests, or encourages an LEP person to use friends, minor children, or family members as interpreters, as this could compromise the effectiveness of the service. Use of such persons could result in a breach of confidentiality or reluctance on the part of individuals to reveal personal information critical to their situations. In a medical setting, this reluctance could have serious, even life threatening consequences. In addition, family and friends usually are not competent to act as interpreters, since they are often insufficiently proficient in both languages, unskilled in interpretation, and unfamiliar with specialized terminology. If after a covered program or activity informs an LEP person of the right to free interpreter services, the person declines such services and requests the use of a family member or friend, the covered program or activity may use the family member or friend if the use of such a person would not compromise the effectiveness of services or violate the LEP person's confidentiality. The covered program or activity should document the offer

and declination in the LEP person's file. Even if an LEP person elects to use a family member or friend, the covered program or activity should suggest that a trained interpreter sit in on the encounter to ensure accurate interpretation.

(2) **Competence of Interpreters.** In order to provide effective services to LEP persons, a covered program or activity must ensure that it uses persons who are competent to provide interpreter services. A covered program or activity must ensure that those persons it provides as interpreters are trained and demonstrate competency as interpreters.

e. **Examples of Frequently Encountered Scenarios.** The following are examples of policies and practices that are likely to violate the E.O.

(1) An outpatient clinic uses a Spanish-speaking security guard who has no training in interpreting skills and is unfamiliar with medical terminology, as an interpreter for its Hispanic LEP patients. He frequently relays inaccurate information that results in inaccurate instructions to patients.

(2) A program or activity does not advise a veteran of the veteran's right to free language assistance and encourages the person to use an eleven year-old daughter to interpret. The daughter does not understand the terminology being used and relays inaccurate information to her parent whose health or benefit is jeopardized by the failure to obtain accurate information.

(3) A VA medical center clinic uses a medical student as an interpreter based on the medical student's self-identification as bilingual. While in college, the student had spent a semester in Spain as an exchange student. The student speaks Spanish haltingly and must often ask patients to speak slowly and to repeat their statements. On several occasions, the medical student has relayed inaccurate information that has resulted in misdiagnosis.

(4) A non-English speaking veteran attempts to apply for admission to a state home through social work service and is instructed to provide interpreter services during office visits.

(5) An outpatient clinic requires non-English speaking patients to pay for interpreter services.

f. **Best Practices.** In meeting the needs of their LEP patients and clients, covered programs or activities should provide interpreter services and reach out to the LEP community. As part of its technical assistance, VHA covered programs or activities should learn about and incorporate promising practices in the area of service to LEP populations. Examples of promising practices include the following:

(1) **Simultaneous Translation.** One urban hospital is testing a state-of-the-art medical interpretation system in which the provider and patient communicate using wireless remote headsets while a trained competent interpreter, located in a separate room, provides simultaneous interpreting services to the provider and patient. The interpreter can be miles away. This reduces delays in the delivery of language assistance, since the interpreter does not have to travel to the covered program's or activity's facility. In addition, a provider that operates more than one

VHA DIRECTIVE 2002-006

January 31, 2002

facility can deliver interpreter services to all facilities using this central bank of interpreters, as long as each facility is equipped with the proper technology.

(2) **Language Banks.** In several parts of the country, both urban and rural, community organizations and providers have created community language banks that train, hire and dispatch competent interpreters to participating organizations, reducing the need to have on-staff interpreters for low demand languages. These language banks are frequently nonprofit and charge reasonable rates. This approach is particularly appropriate where there is a scarcity of language services, or where there is a large variety of language needs.

(3) **Language Support Office.** A state social services agency has established an "Office for Language Interpreter Services and Translation." This office tests and certifies all in-house and contract interpreters, provides agency-wide support for translation of forms, client mailings, publications and other written materials into non-English languages, and monitors the policies of the agency and its vendors that affect LEP persons.

(4) **Multicultural Delivery Project.** A hospital has established a "Multicultural Delivery Project" that is designed to find interpreters to help veterans and other LEP persons to navigate the health and social service systems. The project uses volunteer workers to work with LEP clients and can be used by employees in solving cultural and language issues. A multicultural advisory committee helps to keep the facility in touch with its needs.

(5) **Pamphlets.** A hospital has created pamphlets in several languages, entitled "While Awaiting the Arrival of an Interpreter." The pamphlets are intended to facilitate basic communication between inpatients and/or outpatients and staff. They are not intended to replace interpreters but may aid in increasing the comfort level of LEP persons as they wait for services.

(6) **Use of Technology.** Some covered programs or activities use their Internet and/or Intranet capabilities to store translated documents online. These documents can be retrieved as needed.

(7) **Telephone Information Lines.** Covered programs or activities have established telephone information lines in languages spoken by frequently encountered language groups to instruct callers in the non-English languages on how to leave a recorded message that will be answered by someone who speaks the caller's language.

(8) **Signage and Other Outreach.** Other covered programs or activities have provided information about services, benefits, eligibility requirements, and the availability of free language assistance, in appropriate languages by:

(a) Posting signs and placards with this information in public places such as grocery stores, bus shelters and subway stations;

(b) Putting notices in newspapers and on radio and television stations that serve LEP groups;

(c) Placing flyers and signs in the offices of community-based organizations that serve large populations of LEP persons; and

(d) Establishing information lines in appropriate languages.

g. **Model Plan.** The following is an example of a model language assistance program that is potentially useful for all covered programs or activities, but is particularly appropriate for hospitals or social work service that serve a significant and diverse LEP population. This model plan incorporates a variety of options and methods for providing meaningful access to LEP beneficiaries:

(1) A formal written language assistance program.

(2) Identification and assessment of the languages that are likely to be encountered and estimating the number of LEP persons that are eligible for services and that are likely to be affected by its program through a review of census and client utilization data and data from school systems and community agencies and organizations.

(3) Posting of signs in lobbies and in other waiting areas, in several languages, informing applicants and clients of their right to free interpreter services and inviting them to identify themselves as persons needing language assistance.

(4) Use of "I speak" cards by intake workers and other patient contact personnel so patients can identify their primary languages.

(5) Requiring intake workers to note the language of the LEP person in his/her record so that all staff can identify the language assistance needs of the client.

(6) Employment of a sufficient number of staff, bilingual in appropriate languages, in-patient and client contact positions such as intake workers, caseworkers, nurses, doctors. These persons must be trained and competent as interpreters.

(7) Contracts with interpreting services that can provide competent interpreters in a wide variety of languages in a timely manner.

(8) Formal arrangements with community groups for competent and timely interpreter services by community volunteers.

(9) An arrangement with a telephone language interpreter line.

(10) Translation of application forms, instructional, informational and other key documents into appropriate non-English languages. Provision of oral interpreter assistance with documents, for those persons whose language does not exist in written form.

VHA DIRECTIVE 2002-006

January 31, 2002

(11) Procedures for effective telephone communication between staff and LEP persons, including instructions for English-speaking employees to obtain assistance from bilingual staff or interpreters when initiating or receiving calls from LEP persons.

(12) Notice to and training of all staff, particularly patient and client contact staff, with respect to the covered program's or an activity's E.O. obligation to provide language assistance to LEP persons, and on the language assistance policies and the procedures to be followed in securing such assistance in a timely manner.

(13) Insertion of notices, in appropriate languages, about the right of LEP applicants and clients to free interpreters and other language assistance, in brochures, pamphlets, manuals, and other materials disseminated to the public and to staff.

(14) Notice to the public regarding the language assistance policies and procedures, and notice to and consultation with community organizations that represent LEP language groups, regarding problems and solutions, including standards and procedures for using their members as interpreters.

(15) Adoption of a procedure for the resolution of complaints regarding the provision of language assistance; and for notifying clients of their right to and how to file a complaint under the E.O. with VHA.

(16) Appointment of a senior level employee to coordinate the language assistance program, and ensure that there is regular monitoring of the program.

h. Compliance and Enforcement

(1) The recommendations outlined above are not intended to be exhaustive. Covered programs or activities have considerable flexibility in determining how to comply with their legal obligation in the LEP setting, and are not required to use all of the suggested methods and options listed. However, covered programs or activities must establish and implement policies and procedures for providing language assistance sufficient to fulfill their E.O. responsibilities and provide LEP persons with meaningful access to services. VHA will enforce the E.O. as it applies to covered programs' or activities' responsibilities to LEP persons through the procedures provided for in the E.O. directive. These procedures include complaint investigations, efforts to secure voluntary compliance, and technical assistance. The E.O. policy provide that VHA will investigate whenever it receives a complaint, report or other information that alleges or indicates possible noncompliance with the E.O. If the investigation results in a finding of compliance, VHA will inform the covered program or activity in writing of this determination, including the basis for the determination. If the investigation results in a finding of noncompliance, VHA must inform the covered program or activity of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance, and must attempt to secure voluntary compliance through informal means. If

the matter cannot be resolved informally at the local level, the VISN or next higher level must secure compliance, and lastly, referral to the appropriate Headquarters official for relief.

(2) As the E.O. policy indicates, VHA has a legal obligation to seek voluntary compliance in resolving cases. VHA will engage in voluntary compliance efforts, and will provide technical assistance to covered programs or activities at all stages of its investigation. During these efforts to secure voluntary compliance, VHA will propose reasonable timetables for achieving compliance and will consult with and assist covered programs or activities in exploring cost effective ways of coming into compliance by sharing information on potential community resources, by increasing awareness of emerging technologies, and by sharing information on how other covered programs or activities have addressed the language needs of diverse populations.

(3) VHA will focus its compliance review efforts primarily on larger facility covered programs or activities such as medical services or social service that have a significant number or percentage of LEP persons eligible to be served, or likely to be directly affected, by the covered program or activity. In order to ensure compliance with the E.O., these covered programs or activities will be expected to utilize a wider range of the language assistance options outlined in the preceding.

(4) The fact that VHA is focusing its investigative resources on larger covered programs or activities with significant numbers or percentages of LEP persons likely to be served or directly affected, does not mean that other covered programs or activities are relieved of their obligation under the E.O., or will not be subject to review by VHA. In fact, VHA has an obligation to promptly investigate all complaints alleging a violation of the E.O. All covered programs or activities must take steps to overcome language differences that result in barriers and provide the language assistance needed to ensure that LEP persons have meaningful access to services and benefits. However, smaller covered programs or activities, such as covered programs or activities who serve small numbers of LEP persons on an infrequent basis, will have more flexibility in meeting their obligations to ensure meaningful access for LEP persons.

(5) In determining a covered program's or activity's compliance with the E.O., VHA's primary concern is to ensure that the covered program's or activity's policies and procedures overcome barriers resulting from language differences that would deny LEP persons a program's or an activity's entity's appropriate use of the methods and options discussed in this policy guidance will be viewed by VHA as evidence of a covered program's or activity's willingness to comply voluntarily with its LEP obligations.

i.. **Technical Assistance.** VHA will provide technical assistance to covered programs or activities, and will be available to provide such assistance to any covered program or activity seeking to ensure that it operates an effective language assistance program. In addition, during its investigative process, VHA is available to provide technical assistance to enable covered programs or activities to come into voluntary compliance.

J. Other

VHA DIRECTIVE 2002-006

January 31, 2002

(1) Attachment F is a summary, in question and answer format, of a number of the critical elements of this guidance. The purpose of the summary is to assist covered program or activities further in understanding this guidance and their obligations under the E.O. to ensure meaningful access to LEP persons.

(2) Attachment G is a list of programs or activities conducted by the Veterans Health Administration.

(3) The Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, both provide similar prohibitions against discrimination on the basis of disability and require entities to provide language assistance such as sign language interpreters for hearing impaired individuals or alternative formats such as braille, large print or tape for vision impaired individuals. In developing a comprehensive language assistance program, covered programs or activities should be mindful of their responsibilities under the ADA and Section 504 to ensure access to programs for individuals with disabilities.

(4) The "safe harbor" provisions are not intended to establish numerical thresholds for when a covered program or activity must translate documents. The numbers and percentages included in these provisions are based on the balancing of a number of factors, and VHA's discussions with other Departments or agencies about experiences of their covered programs or activities with language access issues.

(5) Vital documents include applications, consent forms, letters containing information regarding eligibility or participation criteria, and notices pertaining to reduction, denial or termination of services or benefits, that require a response from beneficiaries, and/or that advise of free language assistance. Large documents, such as handbooks, may not need to be translated in their entirety. However, vital information contained in large documents must be translated.

(6) For instance, a therapeutic program that regularly encounters, or potentially will encounter on a regular basis, LEP persons who speak several different languages, would not be required to translate the lengthy program brochure into every regularly encountered language. Rather, the covered program or activity in these circumstances would likely be required to translate the written materials into the most frequently encountered languages. Regarding the remaining regularly encountered languages, the covered program or activity would be required to ensure that the LEP person receives written notification in the appropriate non-English language of the right to free oral translation of the written materials. In addition, the covered program or activity would frequently be required to provide written translations of vital documents that are short in length and pertain to important aspects of critical programs, such as a cover letter that outlines the terms and conditions of participation in a therapeutic program, and/or contains time sensitive information about enrollment or continued participation.

ATTACHMENT F

**QUESTIONS AND ANSWERS REGARDING THE VHA CIVIL RIGHTS
OFFICE FOR POLICY GUIDANCE ON EXECUTIVE ORDER 13166
PROHIBITION AGAINST NATIONAL ORIGIN DISCRIMINATION AS IT
AFFECTS PERSONS WITH LIMITED ENGLISH PROFICIENCY**

Question 1. Q. What is the purpose of the guidance on language access?

Answer. The purpose of the Policy Guidance is two-fold: First, to clarify the responsibilities of Veterans Health Administration (VHA) providers of health care who operate Federally-conducted programs and activities, and assist them in fulfilling their responsibilities to Limited English Proficient (LEP) persons, pursuant to Executive Order (E.O.) 13166; and second, to clarify to veterans that VHA ensure that LEP persons have meaningful access to their programs and services.

Question 2. What does the policy guidance do?

Answer. The policy guidance does the following:

- a. Reiterates the principles of the E.O. with respect to LEP persons.
- b. Discusses the policies, procedures and other steps that program or activities can take to ensure meaningful access to their programs by LEP persons. It also clarifies that failure to take one or more of these steps does not necessarily mean noncompliance with the E.O.
- c. Provides that VHA will determine compliance on a case-by-case basis, and that such assessments will take into account the size of the program or activity, the size of the LEP population, the nature of the program, the resources available, and the frequency of use by LEP persons.
- d. Provides that small program or activities with limited resources will have a great deal of flexibility in achieving compliance.
- e. Provides that VHA will provide technical assistance as needed by covered programs or activities.

Question 3. Does the guidance impose new requirements on covered programs or activities?

Answer. Yes. Although this guidance synthesizes the legal requirements that have been on the books for over 3 decades, it applied to *recipients that received Federal financial assistance*. Executive Order 13166 sets forth a new obligation, it requires that the same legal requirements be applied to *programs and activities conducted by all Executive agencies*. Because the Federal government adheres to the principles of nondiscrimination and inclusion embodied in Title VI, the E.O.requires all Federal agencies to meet the same standards as Federal financial assistance

VHA DIRECTIVE 2002-006

January 31, 2002

recipients in providing meaningful access for LEP individuals to Federally-conducted programs. Each VHA facility must develop a plan for providing that access.

Question 4. Who is covered by the guidance?

Answer. All programs and activities conducted by VHA that are funded by the Department of Veterans Affairs (VA).

Question 5. What is a VHA Federally-conducted program or activity?

Answer. Anything that VHA does, including all contact with the public, falls within the scope of Federally-conducted programs or activities. The definition of Federally-conducted programs is the same under E.O. 13166 as the definition used under VA's regulations for application of Section 504 of the Rehabilitation Act of 1973 (Title 38 Code of Federal Regulations (CFR), Part 15) to Federally-conducted programs.

Question 6. Does the Executive Order apply to Federally-conducted activities overseas?

Answer. No. The Department of Justice has determined that E.O. 13166 applies only within the United States and its territories and does not apply extraterritorially. However, VHA conducts activities overseas and must still submit a plan for making its domestic activities accessible to people who are limited English proficient. The plans must indicate that VHA conducts Federal activities abroad, but that DOJ had determined that the E.O. does not apply to those activities.

Question 7. Does the Executive Order apply to materials on Web sites?

Answer. Yes. However, the decision to place something on the Web will not affect whether the document must be translated. For example, placement on the Web site should not change VHA's original assessment regarding the number or proportion of LEP persons that comprise the intended audience for that document. Generally, entire Web sites need not be translated, as only the vital information or documents within the Web site might need translation. If VHA determines that a particular document or piece of information should be translated, that translation should also be posted on the Web site if the English-language version is on the Web site. If documents are translated within a Web site, the existence of the translation should be noted (in the appropriate language) at an initial entry point to the site (usually the Home page).

Question 8. What does E.O. 13166 require for Federal employment practices?

Answer. If English is essential in a job, the E.O. would not require any services for LEP individuals. For jobs where VHA determined English is not essential, the four factors must be applied.

Question 9. Does E.O. 13166 require that bids be let in languages other than English?

Answer. Generally, current practice with regard to announcing Federal government contracts and grants would not be altered under the E.O. In determining what is required, the focus of the analysis in this situation is on the first factor--the number or proportion of eligible LEP persons. Except, perhaps, in territories, it is reasonable to expect that the number or proportion of eligible contract or grant recipients who are LEP and are themselves attempting to find and respond to announcements of grants and contracts is negligible.

Question 10. How does the guidance affect a small program or activity?

Answer. The key to providing meaningful access for LEP persons is to ensure that the relevant circumstances of the LEP person's situation can be effectively communicated, that the LEP person is able to understand the services and benefits available and is able to receive those services and benefits for which he or she is eligible in a timely manner.

Question 11. The guidance makes reference to "vital documents" and notes that, in certain circumstances, a covered program or activity may have to translate such documents into other languages. What is a vital document?

Answer. Given the wide array of programs and activities conducted by VHA, no attempt to identify vital documents and information with specificity in each program area is made. Rather, a document or information should be considered vital if it contains information that is critical for accessing the services and/or benefits, or is required by law. Thus, vital documents include, but are not limited to, applications, consent forms, letters and notices pertaining to the reduction, denial or termination of services or benefits, letters or notices that require a response from the beneficiary or client, and documents that advise of free language assistance.

Question 12. Will covered programs or activities have to translate large documents such as books?

Answer. Not necessarily. As part of its overall language assistance program, a program or activity must develop and implement a plan to provide written materials in languages other than English where a significant number or percentage of the population eligible to be served, or likely to be directly affected by the program, needs services or information in a language other than English to communicate effectively. VHA will assess the need for written translation of documents and vital information contained in larger documents on a case-by-case basis, taking into account all relevant circumstances, including the nature of the covered program's or activity's services or benefits, the size of the covered program or activity, the number and size of the LEP language groups in its service area, the nature and length of the document, the objectives of the program, the total resources available to the covered program or activity, the frequency which particular languages are encountered and the frequency with which translated documents are needed and the cost of translation. Depending on these circumstances, large documents, such as handbooks, may not need to be translated or may not need to be translated in their entirety. For example, a covered program or activity may be required to provide written translations of vital information contained in larger documents, but may not have to translate the entire document, to meet its obligations under the E.O.

VHA DIRECTIVE 2002-006

January 31, 2002

Question 13. May a covered program or activity require an LEP person to use a family member or a friend as the LEP person's interpreter?

Answer. No. VHA's policy requires the covered program or activity to inform the LEP person of the right to receive free interpreter services first and permits the use of family and friends only after such offer of assistance has been declined and documented. VHA's policy regarding the use of family and friends as interpreters is based on over 3 decades of experience with other Federal agencies with Title VI. Although VHA recognizes that some individuals may be uncomfortable having a stranger serve as an interpreter, especially when the situation involves the discussion of very personal or private matters, family and friends frequently are not competent to act as interpreters, since they may be insufficiently proficient in both languages, untrained and unskilled as interpreters, and unfamiliar with specialized terminology. Use of such persons also may result in breaches of confidentiality or reluctance on the part of the individual to reveal personal information critical to their situations. These concerns are even more pronounced when the family member called upon to interpret is a minor. In other words, when family and friends are used, there is a grave risk that interpretation may not be accurate or complete. In medical settings, in particular, this can result in serious, even life threatening consequences.

Question 14. How does low health literacy, non-literacy, non-written languages, blindness and deafness among LEP populations affect the responsibilities of Federally-conducted programs or activities?

Answer. Effective communication in any language requires an understanding of the literacy levels of the eligible populations. However, literacy generally is a program operations issue rather than an E.O. issue. Where an LEP individual has a limited understanding of health matters or cannot read, access to the program is complicated by factors not directly related to national origin or language. Under these circumstances, a covered program or activity should provide remedial health information to the same extent that it would provide such information to English-speakers. Similarly, a covered program or activity should assist LEP individuals who cannot read in understanding written materials as it would non-literate English-speakers. A non-written language precludes the translation of documents, but does not affect the responsibility of the program or activity to communicate the vital information contained in the document or to provide notice of the availability of oral translation. Section 504 of the Rehabilitation Act of 1973 requires that Federal fund recipients provide sign language and oral interpreters for people who have hearing impairments and provide materials in alternative formats such as in large print, braille or on tape for individuals with impairments. The Americans with Disabilities Act imposes similar requirements on health and human service providers.

Question 15. How will VHA enforce compliance by covered programs or activities with the LEP requirements of the E.O.?

Answer. VHA will enforce the E.O. as it applies to covered programs or activities through the procedures provided for in VHA Directive 99-043, Nondiscrimination in Federally-Conducted and Federally-Assisted (External) Programs. The external policy is based on civil rights regulations. The VHA Directive provide that each VHA facility Equal Employment

Opportunity/Affirmative Employment Specialist must investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with LEP guidance. If the investigation results in a finding of compliance, VHA must inform the covered program or activity in writing of this determination, including the basis for the determination. If the investigation results in a finding of noncompliance, VHA must inform the covered program or activity of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. By policy, VHA will secure voluntary compliance through informal means. If the matter cannot be resolved informally at the local facility, (a) the Veterans Integrated Service Network (VISN) Director must secure compliance through voluntary compliance after the covered program or activity has been given an opportunity for an administrative review, (b) referral to the appropriate official for enforcement.

Question 16. Does issuing this guidance mean that VHA will be changing how it enforces compliance with VHA policy?

Answer. No. How VHA enforces its policy is consistent with civil rights implementing regulations. The methods and procedures used to investigate and resolve civil rights complaints have not changed.

Question 17. What is VHA Headquarters doing to ensure covered programs or activities are following the guidance it is giving to facilities?

Answer. Executive Order 13166 subject VHA Federally-conducted programs and activities to recognize the importance of ensuring that its programs and services are accessible to LEP persons. To this end, VHA may establish a working group to assess how it is providing language access. Staff offices across VHA may have to take a number of important steps to ensure that their programs and services are accessible to LEP persons. For example, offices may have to ensure that covered programs or activities translate important consumer materials into languages other than English or launch Spanish language web sites. In order to ensure that all VHA Federally-conducted programs and activities are accessible to LEP persons, VHA policy has been amended to ensure LEP persons have meaningful access to programs. This internal VHA directive was begun prior to the President's August 11, 2000, E.O. 13166, "Improving Access to Services for Persons with Limited English Proficiency". The E.O. requires VA to develop and implement a system for ensuring LEP persons meaningful access to its Federally-conducted programs. It also requires agencies to issue guidance to their recipients on the recipients' obligations to provide LEP persons meaningful access to their Federally-assisted programs.

ATTACHMENT G

DEPARTMENT OF VETERANS AFFAIRS
FEDERALLY-CONDUCTED PROGRAMS AND ACTIVITIES

This Attachment applies to all programs or activities conducted by the Veterans Health Administration (VHA), except for programs or activities conducted outside the United States, to programs and activities covered under Title 38 Code of Federal Regulations (CFR), Part 15, Federally-conducted administered by the Department of Veterans Affairs (VA), and to:

1. VHA space and office facilities for representatives of recognized national organizations (Title 38 United States Code (U.S.C.) 5902(a)(2)).
2. Sharing of medical facilities, equipment, and information (38 U.S.C. 8151-8157).
3. VHA space and office facilities for representatives of State employment services (38 U.S.C. 7725(1)).
4. Medical care for survivors and dependents of certain veterans (38 U.S.C. 1713).
5. Transfers for nursing home care; adult day health care (38 U.S.C. 1720).
6. Treatment and rehabilitation for alcohol or drug dependence or abuse disabilities (38 U.S.C. 1720A).
7. VA health professional scholarship program (38 U.S.C. 7601-7655).
8. All other programs and/or activities conducted by the Agency.